United States Court of Appeals

for the Second Circuit

APPENDIX

75-4165

In The

United States Court of Appeals

For The Second Circuit

MAURICE GERSHMAN d/b/a QUEENS-NASSAU NURSING HOME,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CYCLE CLEANING CORP.,

Respondent.

On Appeal from the National Labor Relations Board

JOINT APPENDIX

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JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTIRES

In the Matter of: Maurice Gershman d/b/a Queens-Nassau Nursing Home

Case Nos.: 29-CA-3924 & 29-RC-2659

7. 8.74	Charge filed
10. 4.74	Complaint and Notice of Hearing, dated
10.14.74	Request for Adjournment dated
10.15.74	Petitioner Home's Answer, dated
10.22.74	Order rescheduling hearing, dated
10.31.74	Report on Challenged Ballots and Objections Order Consolidating Cases and Notice of Hearing, dated
11. 7.74	Order rescheduling hearing, dated
11.12.74	Request for Adjournment, dated
11.21.74	Answer of Respondent's Cycle, dated
11.22.74	Order rescheduling hearing, dated
11.27.74	Order Amending Complaint, dated
12.11.74	Hearing opened
12.13.74	Hearing closed
3.31.75	Administrative Law Judge's Decision, dated
4. 2.75	Administrative Law Judge's Erratum, dated
4.23.75	Petitioner's Exceptions to the Administrative Law Judge's Decision, received
4.24.75	General Counsel's Exceptions to the Administrative Law Judge's Decision, received
6.30.75	Board's Decision and Order, dated

JKP

D--68
New York, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING
HOME, JOINT EMPLOYERS

Case 29--CA--3924 1/

and

LOCAL 1115, JOINT BOARD,
NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING
HOME, JOINT EMPLOYERS

Employer

Case 29--RC--2659 2/

and

LOCAL 144, HOTEL, HOSPITAL, NURSING
HOME AND ALLIED HEALTH SERVICES UNION
AFFILIATED WITH SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO

Petitioner

DECISION AND ORDER

On March 31, 1975, Administrative Law Judge Eugene D. Dixon issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent Maurice Gershman d/b/a Queens-Nassau Nursing Home filed exceptions and supporting briefs.

1/ Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union affiliated with Service Employees International Union, AFL--CIO, was Party in Interest in this proceeding.

2/ On March 31, 1975, Case 29--RC--2659 was severed from Case 29--CA--3924 and remanded to the Regional Director for Region 29 for further proceeding pursuant to an agreement for consent election.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[3/] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent Cycle Cleaning Corp., New York, New York, its officers, agents, successors, and assigns, and Respondent Maurice Gershman d/b/a Queens-Nassau Nursing Home, New York, New York, his agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge in conformity with his Erratum.

Dated, Washington, D.C. JUN 30 1975

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

3/ We note the following inadvertent errors in the Administrative Law Judge's Decision which do not affect his conclusions or our adoption thereof:
The nursing home's administrator, Krakowski, rather than Klein, testified that representatives of Local 4 were ordered from the premises of the nursing home because of their loud and foul language. The office of Region 29 is located in Brooklyn, New York, rather than Milwaukee, Wisconsin.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT discourage membership in Local 1115, Joint Board, Nursing Home and Hospital Employees Division or in Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union affiliated with Service Employees International Union, AFL--CIO, or any other union, by discharging or otherwise discriminating against any of our employees because of union considerations.

WE WILL NOT contribute assistance or support to Local 144 in its solicitation of union membership among our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to join or assist Local 144 or Local 1115 or to form, join, or assist any other labor organization, to bargain collectively concerning terms or conditions of employment through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any such activity, except as these rights might be affected by a contract validly made under the National Labor Relations Act with a labor organization, whereby membership in the labor organization is a condition of employment after 30 days following the date of the contract or the beginning of the individual's employment, whichever is later.

WE WILL offer to Robert Ortiz immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings or other economic loss suffered by him as a result of our discrimination against him.

All our employees are free to become or remain, or refrain from becoming or remaining, members in any labor organization.

CYCLE CLEANING CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

MAURICE GERSHMAN
d/b/a QUEENS-NASSAU
NURSING HOME
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212—596—3535.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING HOME,
JOINT EMPLOYERS

Employer

and

Case No. 29-RC-2659

LOCAL 144, HOTEL, HOSPITAL,
NURSING HOME AND ALLIED HEALTH
SERVICES UNION INTERNATIONAL
UNION, AFL-CIO

Petitioner

and

LOCAL 1115, JOINT BOARD,
NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION

Intervenor

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING HOME,
JOINT EMPLOYERS

Respondent

and

Case No. 29-CA-3924

LOCAL 1115, JOINT BOARD,
NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION

Charging Party

and

LOCAL 144, HOTEL, HOSPITAL,
NURSING HOME AND ALLIED HEALTH
SERVICES UNION affiliated with
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO

Party in Interest

ERRATUM

In my Decision of March 31, 1975, in captioned matter I inadvertently neglected to include a reinstatement and backpay provision in the notice. Accordingly I hereby correct the notice to include the following additional provisions:

> WE WILL offer to Robert Ortiz immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings or other economic loss suffered by him as a result of our discrimination against him.

Eugene E. Dixon
Administrative Law Judge

April 2, 1975

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING HOME,
JOINT EMPLOYERS

Employer

and

Case No. 29-RC-2659

LOCAL 144, HOTEL, HOSPITAL,
NURSING HOME AND ALLIED HEALTH
SERVICES UNION INTERNATIONAL
UNION, AFL-CIO

Petitioner

and

LOCAL 1115, JOINT BOARD,
NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION

Intervenor

CYCLE CLEANING CORP. AND
MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING HOME,
JOINT EMPLOYERS

Respondent

and

Case No. 29-CA-3924

LOCAL 1115, JOINT BOARD,
NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION

Charging Party

and

LOCAL 144, HOTEL, HOSPITAL,
NURSING HOME AND ALLIED HEALTH
SERVICES UNION affiliated with
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO

Party in Interest

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New York, N. Y., for
Respondent Queens-Nassau
Nursing Home,
Leo Kayser, Esq. (Baker &
McKenzie), of New York, N. Y.,
for Cycle Cleaning Corp.

DECISION

Statement of the Case

EUGENE E. DIXON, Administrative Law Judge: This proceeding, brought under Section 10(b) of the National Labor Relations Act as amended (61 stat. 136), herein called the Act, was heard at Brooklyn, New York December 11-13, 1974. The Complaint dated October 4, 1974 was based upon duly served charges filed by Local 1115, Joint Board, Nursing Home and Hospital Employees Division, on July 8, 1974 and was issued by the acting Regional Director for Region 29 (Milwaukee, Wisconsin) of the National Labor Relations Board on behalf of its General Counsel, herein called the Board and the General Counsel.

The Complaint alleges that Respondents had engaged in and were engaging in unfair labor practices in violation of Section 8(a)(1), (2) and (3) of the Act.

In their duly filed answers Respondents denied the commission of any unfair labor practices.

The alleged unfair labor practices also form the basis for objections filed by Local 1115 to conduct affecting the results of an election conducted on June 12, 1974 in which Local 1115 was rejected as collective bargaining agent of the employees in favor of Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union International Union, AFL-CIO.

Upon the entire record and from my observation of the witnesses, I make the following:

Findings of Fact

I. Respondents' Businesses

Maurice Gershman, an individual, is, and has been at all times material, an individual proprietor doing business under the trade name and style of Queens-Nassau Nursing Home (herein called Home). At all times material Respondent Home has maintained its principal office and place of business at 520 Beach 19th Street, County of Queens, in the City, and State of New York, where it is and has been at all times material continuously engaged in operating a nursing home and performing related services. During the year preceding issuance of the Complaint which is representative of its annual operations generally, Respondent Home in the course and conduct of its operations derived gross revenues therefrom in excess of $100,000.

During the same representative period of time Respondent Home, in the course and conduct of its business purchased and caused to be transported and delivered to its place of business, food products, and other goods and materials valued in excess of $20,000 which were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state in which it is located.

Respondent, Cycle Cleaning Corp. (herein called Cycle) at all times material has been a corporation duly organized under and existing by virtue of the laws of the State of New York. At all times material Respondent Cycle has maintained its principal office and place of business at 7730 164th Street, in the County of Queens, in the City and State of New York, where it is and has been at all times material continuously engaged in providing housekeeping and porter services and related services for various nursing homes located in the City and State of New York. During 1974 which year is representative of its annual operations generally, Respondent Cycle in the course and conduct of its business operations performed services valued in excess of $50,000 for Respondent Home. Respondent Home and Respondent Cycle each at all times material have been Employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

Local 1115, Joint Board, Nursing Home and Hospital Employees Division and Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union affiliated with Service Employees International Union, AFL-CIO, at all times material have been labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Background and Issues

Prior to October 30, 1973 Respondent Home's housekeeping department performed its own cleaning and maintenance duties largely with its own employees. On October 30, Home entered into a contract with Cycle under which the latter for a fixed fee agreed to perform "all such duties as would be performed" by Home's housekeeping department. To accomplish this Cycle agreed to furnish porters and maids and its own supervision. 1/

On May 16, 1974, Local 144 filed Representation Petition (29-RC-2659) seeking certification as exclusive bargaining agent of a unit consisting of non-professional employees, including nurses aides and orderlies employed by the Home and housekeeping employees, including porters, employed by Cycle. On May 21 a consent election agreement was entered into -- the election to be held on June 12 and to include on the ballot an intervening union, Local 1115, Joint Board, Nursing Home and Hospital Employees Division. Although not included on the ballot two other unions (a Local 1119 and a Teamsters Local No. 4) also made some attempts during the ensuing campaign to solicit the employees' support.

On June 12 the election took place in which Local 1115 received only eight votes out of a total of 75. On June 17 Local 1115 filed objections to the election and on July 8 filed unfair labor practice charges resulting in the issuance of a Complaint. On October 31 the Regional Director issued a report

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1/ This supervision was comprised of a series of so-called housekeepers who were assigned by Cycle full-time to the Home and by periodic visits of an area supervisor, Esther Watkins.

on the objections (recommending a hearing on them) and an order consolidating the Complaint case and the objections matter and a notice of hearing thereon.

In substance the main issues in the cases (the objections being merged in the allegations of the Complaint) are: 1. Whether Respondents Home and Cycle are joint employers within the meaning of the Act. 2. Whether Respondents assisted Local 144 in violation of Section 8(a)(2) of the Act. 3. Whether Respondents discharged Robert Ortiz because of his activity on behalf of Local 1115 2/ in violation of Section 8(a)(3). 4. Whether Respondents, by the above conduct plus some other specified acts, interfered with, restrained and coerced employees in violation of Section 8(a)(1).

The Joint Employer Question

There is no common ownership between Home and Cycle. None of the officers, directors or stockholders of Cycle have any interest or hold any office in Home. The accounting system employed by Home is not in any way utilized jointly or in conjunction with Cycle. No profit sharing, insurance, or other compensation plans are offered by Home or Cycle employees. Cycle and Home maintain their own independent offices geographically removed from one another.

By and large Cycle hires its porters and maids without any consultation with Home. 3/ Also without consultation it draws up work schedules for its porters and maids; determines on what shifts and which days each of the various employees is to work; what employees are to work on holidays or to work overtime. Discipline of the porters and maids is dispensed only by Cycle.

Once a week Cycle picks up the timecards of its employees from which to compute its payroll. Cycle and Home each prepares its own job descriptions. As for the duties of the employees of Cycle and Home being interchangeable Watkins testified that "In case of emergency . . . no one . . . is held to job descriptions," and went on to explain, "Now, by 'emergency,' I don't mean that the roof is falling down but perhaps someone has not shown up for a job or . . . they have an empty slot and they have to get something done."

2/ Another alleged discriminatee, Juan Cintron, failed to appear at the hearing and charges involving him were dismissed at the General Counsel's request.

3/ Nonetheless in the case of Ortiz, as will be seen, Assistant Administrator Morris Lebowitz of the Home played a significant part in his retention and promotion by Cycle.

Regardless what interpretation is given to the term "emergency" the evidence shows that not only is there a great deal of interchange of the porters own duties with those of the Home, 4/ but the porters are subject to the joint control and supervision of Cycle and the Home. Thus, when Cycle took over the housekeeping, porter Robert Ortiz was told by Lebowitz that henceforth he would be paid by Cycle and that if the porters had any problems in the future they should come to him or to the Cycle supervisor Watkins. Ortiz also testified credibly that when he was head porter, before he could call in a replacement for an absent porter or before he could take time off himself he had to get permission either from Assistant Administrator Lebowitz or from Watkins.

The evidence also shows that non-emergency overtime for porters and maids must have prior approval of Home management. On one occasion the refusal of one of the porters to accept an order from Lebowitz gave rise to a meeting of the porters called by Watkins who wanted to find out who it was that was under the impression the porters were not supposed to take orders from Lebowitz. Thereafter Lebowitz' orders were obeyed.

The contract provides for Cycle to perform all the housekeeping duties and specifies that "the housekeeping department will operate as part of the nursing home staff." The contract also specifies in detail the cleaning services required and how they are to be accomplished. The contract specifically reserves to the Home the furnishing of all materials and supplies necessary for the cleaning services. With regard to the hiring of all personnel and supervision for the housekeeping department the contract provides that "all changes will be made only after discussion and mutual agreement with the nursing home administration." The contract also sets forth in detail the wage rates and fringe benefit costs to the employees in question.

4/ Regularly porters have been ordered by Administrator Lebowitz and by Supervisor Watkins to do jobs such as unloading trucks, going to the laundry, storing supplies, painting, putting in light bulbs, plumbing, assisting in the kitchen, moving beds with aides, carrying luggage for patients, fixing appliances, moving sprinklers and assisting maintenance employees with their many duties, none of all the foregoing being part of their regular duties as porters.

Officials of the Home exercise considerable authority in connection with the hiring of Cycle's housekeepers. Thus all housekeeper prospects are interviewed by Lebowitz and the Home's Administrator, Al Krakowski, prior to hiring and their salaries are subject to Home's approval. In fact, housekeeper Ephraim Klein, was hired by Lebowitz and it was only after he was hired that Klein was spoken to by Watkins so she "could explain his duties and responsibilities." It also appears that Home plays an important role in the discharge of the housekeepers. Thus Klein was discharged only after consultation with the Home; and Mintz, another housekeeper, was discharged on complaint by the Home. Another housekeeper, Workman, was transferred after complaints by Home.

Respondent Cycle admits that the Respondents are joint employers of the porters and maids engaged in the common operation of the Housekeeping Department of the Home. Respondent Home, however, denies this allegation in its Answer and insists as an Affirmative Defense that Respondent Cycle is an independent contractor providing cleaning and related services to Home pursuant to a contract, and provides its own employees over whom it exercises sole authority and control. Notwithstanding this contention it appears that in the Agreement for Consent Election signed by both Respondents in Case 29-RC-2659, Home agreed to a unit that included "porters and maids employed jointly by Cycle Cleaning Corp. and Queens-Nassau Nursing Home."

In my opinion the foregoing facts reveal sufficient right of control by Home over the Cycle employees to qualify Home as a joint employer with Cycle. I so find. The Greyhound Corporation, 153 NLRB 1488; West Texas Utilities Company, 108 NLRB 407; Austin Company, 101 NLRB 1257.

Assistance

Several witnesses for the General Counsel testified credibly about seeing Local 144 representatives in the Home repeatedly. On some occasions they were active in various parts of the Home soliciting employees on behalf of the Union and on other occasions fraternizing with supervisory personnel. Thus, Faye Winkler, receptionist, testified that in May and June she saw Local 144 representative Virginia Allen in the Home about a half dozen times. Rita Freston, director of nursing, testified that at the end of May she saw Allen having coffee with Supervisors Mary McNab and Ardis Watson. She also saw Local 144 representative Goodman making a telephone call from the pay phone in the hall.

These things were reported to housekeeper Klein who made no comment. McNab, a licensed practical nurse, saw Goodman talking to one of the nurses at her station. Morris Wilkinson, a porter, testified that during May and June he saw Local 144 representatives Goodman and Goodwin in the home "at least 2 or 3 times a week . . . ." On one occasion Goodman stopped and talked to him about the Union in the first floor dinning room. On another occasion Goodman was talking to an employee at the nurses' station on the second floor. Watson was present but voiced no objection to Goodman.

Thomas McKethen, a porter, testified that in May or June he saw Local 144 representatives in the lobby. As he passed by them he was told, "Don't forget what union to vote for, Local 144." McNab was present at the time and voiced no objection. Daisy McQueen testified about seeing Goodman in early June on the third floor handing out leaflets. McQueen had been backing another union, a Local 1199, and her active solicitation for it on all five floors and in the dinning room was known to management but not prohibited or interfered with in any way. In addition to Local 144, Local 1115 and the Union being backed by McQueen, another union a Local 4 of the Teamsters was also interested in the Home and its representatives were seen by McNab in the Home several times handing out literature. 5/ McNab even signed one of their cards.

Local 144 representative Allen testified (reluctantly) about being at the Home on June 5, 1974 talking to employees about joining the Union. She also admitted being at the Home on June 8 to talk to the employees about attending a meeting to be held on June 10 at a bar across the street from the Home.

About this meeting, Wilkinson testified: For a week and a half there was a "sign" in the dinning room "like a poster" announcing a meeting to be held by Local 144 at 3 p.m. -- an hour before the end of the day shift. Wilkinson asked the housekeeper (Mintz or Klein) if he could attend. The housekeeper said he would

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5/ In December 1973, according to Wilkinson's testimony, the business agent for Local 4 while attempting to talk to employees in the dinning room was ordered to leave the premises by a couple of the registered nurses. The reason for the expulsion as explained by Klein in his testimony was because of the loud and foul language the business agent had used in an argument that had developed between him and the nurses.

have to get permission from Esther Watkins. Watkins said that it was "okay" as long as he punched out. Present at the meeting besides Union Representatives Allen and Goodman were some nurses aides, porters and Supervisor Watkins herself. Allen, according to Wilkinson, in a manner of speaking introduced Watkins 6/ and said that "as far as the porters were concerned, Miss Watkins would tell (them) about that . . . ." Someone said he heard that "Cycle was automatically 144." 7/ Allen said that Watkins would explain "because Cycle was entirely different than the Home."

In my opinion Watkins' attendance at and participation in the Local 144 meeting of the employees, particularly in the light of the free run 144's organizers had of the Home and in view of Watkins' statement to Wilkinson that the employees "automatically" belonged to Local 144, was a clear signal to the employees that management approved of and was backing 144 as the employees' bargaining representative and constituted illegal assistance to Local 144 in violation of Section 8(a)(2). I so find. 8/ I also find that this conduct is sufficient to require that the election in Case 29-RC-2659 be set aside.

Discrimination

Robert Ortiz was hired as a porter in July 1973 by Morris Lebowitz then housekeeper at the Home. In October Ortiz talked to Local 1115 representative Morales at which time he received a supply of 1115 authorization cards that he proceeded to pass out to employees during breaks, lunch and after work. According to the testimony of Ortiz, in October he talked to Morales 4 or 5 times outside the Home or on the telephone from his home. On one of these occasions as he was coming into the Home with authorization cards in his hand, Lebowitz stopped him and asked him what he had in his hand. Ortiz said, "These are union cards." Lebowitz asked to look at one. Ortiz handed him one; Lebowitz looked at it and handed it back without comment.

6/ According to Watkins' testimony, when a question was directed to a union representative at the meeting he stated, "I'll let Miss Watkins answer that question . . . you all know her."

7/ Wilkinson testified that early in 1974 Watkins told him that the employees "automatically . . . belonged to 144." They had been talking about when they were going to get a union. This was undenied by Watkins; I credit Wilkinson.

8/ There was disputed evidence offered to show disparate treatment by Respondents of Local 1115 representatives in connection with the granting of access to the Homes premises. Since such conduct if found could only serve to accentuate an already clear cut violation of Section 8(a)(2) I deem it unnecessary to dispose of it.

Ortiz testified that in September 1973 he was made head porter and given a $10 raise. 9/ Ortiz also testified that in May he attended a meeting of porters called by Watkins in the basement of the Home. According to Ortiz, at this time she told them that if they voted for Local 1115 she would "change the whole crew around." 10/ He also testified that about 2 weeks before the election Watkins told him that if kept "talking about the Union" she would discharge him. At the General Counsel's prodding he added that Watkins identified the Union as Local 1115. Watkins denied at any time threatening or talking to any porter about Local 1115. I credit Watkins. 11/

Three days before the election, June 9, according to Ortiz's further testimony, Watkins called him in and told him he was being discharged. Ortiz asked why and Watkins replied that it was because he was "a troublemaker because of 1115."

9/ Esther Watkins, then area supervisor for Cycle, testified that it was after Cycle took over the housekeeping for the Home that Ortiz was made head porter. The Company records confirm that on November 25, 1973 (after Cycle took over the housekeeping) Ortiz received his raise.

10/ About this meeting Watkins testified as follows:

> -- I had a problem there with porters punching each others' timecards. A porter didn't even show up sometimes and the card was punched in and out. I, myself, although I was off on Saturdays and Sundays occasionally I would go in, I would find a porter punched in and he had not been there. I would stay a couple of hours. He wouldn't even show up for the whole day.
>
> I did have a meeting, you know, called all of them down stairs and told them that they're not doing their friend any good by punching them in because the next time I found if someone was punched in and wasn't there, the guy that was punched in was going to get fired and if I found out who punched him in, that he was going to get fired, too, a union or not, I'll change the whole darn crew around if I have to, but I'm not going to have this.

11/ Supporting Watkins' was the testimony of Morris Wilkinson, a porter called by the General Counsel, who denied that Watkins or anyone else made any threats regarding Local 1115.

Watkins testified that in the beginning Ortiz was very good but as time went on his absenteeism and tardiness (an admitted overall problem with the porters) 12/ became serious. So serious in fact that in early January she called the porters together to impress upon them the importance of their prompt and uninterrupted attendance. At about this time Watkins received a list of three employees who were on drugs and was ordered to discharge them. Ortiz was one of them. When confronted about the matter, Ortiz at first denied it then revealed that he was in a methodone therapy program. Watkins agreed to keep him on if he would get a letter for his file to that affect. Ortiz did so.

From the second week in February Ortiz began getting oral and written warnings regarding his attendance record. According to Watkins' testimony in late February she confronted Ortiz, Perez and Wilkinson about their attendance records. All three promised to improve. Perez and Wilkinson did, according to Watkins, but Ortiz did not. In the second week of March, Watkins spoke to Ortiz again about it warning him of possible discharge. At this time she also spoke to Lawrence Roth, president of Cycle about it. Rot said he would talk to Ortiz about it because Lebowitz had recommended him so highly. Roth did talk to Ortiz telling him, " . . . if you keep this up, we're going to have to let you go, we don't want to do this you know." 13/ According to Watkins' further testimony, at Lebowitz's suggestion the two of them also talked to Ortiz. Lebowitz told Ortiz that Watkins was going to "get rid" of him if he did not improve and that he was asking Watkins to give him another chance. 14/

12/ Watkins testified that in December Lebowitz complained about the cleanliness of the Home. She explained that due to the absenteeism and tardiness it was difficult to "carry on a full workload" with seven suppose to be there at work and only four or five reporting.

13/ Roth corroborated this in his testimony. He also testified that starting in January or February he had a number of conversations with Watkins regarding the attendance of Ortiz.

14/ In his statement to the Board, Lebowitz denied talking to Ortiz about his attendance or having any knowledge of dissatisfaction with Ortiz on the part of Cycle. I credit Watkins. I also credit Respondents' testimony over Ortiz's denial that he had any warning whatsoever regarding his attendance record.

In addition to his attendance record, Watkins had another problem with Ortiz. He had a tendency to go over the head of the housekeeper and look to Lebowitz for his supervision and direction. On June 4, according to Watkins' further testimony, Ortiz's card was punched in at 8:03 a.m. but he did not arrive at work until 8:30. Watkins made a note in her diary to let him go but did nothing about it until June 9 at which time he was discharged.

On direct examination Watkins was asked if the discharge had anything to do with the union election. Her answer was "Well, yes and no." Asked to explain, Watkins testified as follows:

> Queens-Nassau wasn't the only nursing home that Cycle had or that I was in charge of. Some of the nursing homes that we had, that we was in charge of, had union. I know for a fact that what you put up with, you know, an employee, this is almost like what you are stuck with. I know that, say, number one, the type of record that Robert Ortiz had, number one, you know, we couldn't put up with that, we definitely couldn't put up with that because it was causing problems with the other people you know.

From the foregoing it is clear that the triggering motivation for Ortiz's termination was the conviction that if he was kept on until a union (be it Local 144 or Local 1115) became the bargaining agent of the employees, it would then be impossible to get rid of him. A better example of how to discourage union membership can hardly be imagined than the discharge of employees because of their anticipated selection of a union to represent them. I find that the discharge of Ortiz involved such discrimination and thus violated Section 8(a)(3) of the Act.

Conclusions of Law

1. Cycle Cleaning Corp. and Maurice Gershman d/b/a Queens-Nassau Nursing Home, Joint Employers, are employers engaged in commerce within the meaning of Section 2(2) and (6) of the Act.

2. Local 1115, Joint Board, Nursing Home and Hospital Employees Division and Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union affiliated with Service Employees International Union, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. By discharging Robert Ortiz for union considerations, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By contributing assistance and support to Local 144, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondents have engaged in and are engaging in certain unfair labor practices it will be recommended that they cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Having found that Robert Ortiz was discharged by Respondents in violation of Section 8(a)(3) of the Act, it will be recommended that they offer him full and immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges and make him whole for any loss of earnings or other monitory loss he may have suffered as a result of such discrimination. Any backpay due is to be determined in accordance with the formula set forth in F. W. Woolworth Company, 98 NLRB 289, and Isis Plumbing & Heating Co., 138 NLRB 716.

I also recommend that the election in Case 29-RC-2659 be set aside.

Upon the foregoing findings of fact and conclusions of law and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 15/

15/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, Cycle Cleaning Corp. and Maurice Gershman d/b/a Queens-Nassau Nursing Home, Joint Employers, their officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 1115, Joint Board, Nursing Home and Hospital Employees Division or in Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union affiliated with Service Employees International Union, AFL-CIO or any other labor organization by discharging or in any other manner discriminating against employees in regard to hire or tenure of employment, or any term or condition of employment.

(b) Contributing illegal assistance and support to Local 144, or any other labor organization.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form, join, or assist Local 144 or Local 1115 or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Robert Ortiz immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings or other economic loss suffered by him in the manner set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agent for examination and copying all payroll records, social security payment records, timecards, personnel records and all other records necessary for determination of the amount of backpay due and the rights of reinstatement under the terms of this Order.

(c) Place at their place of business at 520 Beach 19th street, County of Queens, New York City, copies of the attached notice marked "Appendix." 16/ Copies of such notice, on forms provided by the Regional Director for Region 29, after being duly signed by a authorized representative of Respondents shall be posted by Respondents immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D.C.

Eugene E. Dixon
Administrative Law Judge

16/ In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT discourage membership in LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION or in LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO or any other union, by discharging or otherwise discriminating against any of our employees because of union considerations.

WE WILL NOT contribute assistance or support to Local 144 in its solicitation of union membership among our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to join or assist Local 144 or Local 1115 or to form, join, or assist any other labor organization, to bargain collectively concerning terms or conditions of employment to representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any such activity, except as these rights might be affected by a contract validly made under the National Labor Relations Act with a labor organization, whereby membership in the labor organization as a condition of employment after the 30 days following the date of the contract or the beginning of the individual's employment, whichever is later.

All our employees are free to become or remain or refrain from becoming or remaining members in any labor organization.

CYCLE CLEANING CORP.
(Employer)

MAURICE GERSHMAN d/b/a
QUEENS-NASSAU NURSING
HOME
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241, (Tel. No. 212 - 596-3535).

QUEENS NASSAU NURSING HOME
FAR ROCKAWAY, NEW YORK

ATTN: MR. M. TENENBAUM
ADMINISTRATOR

August 24, 1973

Queen Nassau Nursing Home
Far Rockaway, New York

Attn: Mr. M. Tenenbaum, Administrator

Gentlemen:

As you are well aware, there has been a continual rise in the cost of pperating Nursing Homes.

Cleaning costs are increasing. Supplies, equipment and labor will continue upward, while top quality housekeeping supervisors are dwindling. We, as contractors, can transform these functions into an efficient operating department, utilizing modern methods and devices.

A few of the benefits to be derived from the services which we re der are: No concern with the hiring, training, and supervision of housekeeping personnel; purchasing of supplies and equipment; or repairs that are needed. Another factor is the elimination of bookkeeping and payroll problems attributed to your housekeeping department. You will have a FIXED ANNUAL HOUSEKEEPING BUDGET.

Additional levels of outside management and technical personnel will regularly visit the Nursing Home to insure ever-improving standards.

We perform our work, always keeping in mind that the Nursing Home must have a clean and bright look at all times, and we are oriented towards patient comfort.

It is our sincere wish to be of service to you. We are confident that through our services we can set a high standard of housekeeping and linen control.

Very truly yours,

CYCLE CLEANING CORP.

BY Larry Roth
LARRY ROTH, PRESIDENT

LR:ss

AREA TO BE COVERED

Basement through fourth floor

GENERAL SPECIFICATION

DAILY GENERAL CLEANING - ALL ORFICE AREAS

1. Sweep all flooring using treated cloths.
2. Empty and clean all waste baskets, ashtrays, receptacles, etc., damp dust daily.
3. Carpet sweep and vacuum all carpeting and rugs.
4. Remove wastepaper and waste materials to an area designated in the building.
5. Dust and wipe clean all furniture, fixtures and window sills.
6. Wash and dry polish all glass desk and table tops.
7. Dust all chair rails, trim, etc.
8. Dust all baseboards; wash as necessary.
9. Wipe clean and polish all brass and other bright work.
10. Dust, wash, and polish all entrance doors.

LAVATORIES - PUBLIC - DAILY

1. Sweep and wash all flooring.
2. Wash and polish all mirrors, powder shelves and bright work.
3. Wash and disinfect all basins, bowls and urinals.
4. Wash all toilet seats.
5. Damp wipe all partitions, tile walls, dispensers, and receptacles.
6. Empty and clean paper towel receptacles.
7. Remove wastepaper and refuse to a designated area in the building.
8. Fill toilet tissue holders.
9. After daily thorough cleaning, all lavatories will be policed periodically throughout the day.

STAIRCASES AND ELEVATORS

All staircases and elevators will be maintained daily.

DAILY GENERAL CLEANING - ALL PATIENT AREAS

1. Sweep all flooring, using chemically treated mops.

2. Empty and clean all waste baskets, receptacles, etc., damp dust daily.

3. Remove wastepaper and waste materials to a designated area in the building.

4. Wipe clean and polish all brass and other bright work.

5. After daily thorough cleaning, all patient areas will be policed periodically throughout the day.

6. Spot wash walls as needed.

7. Isolation rooms will be cleaned after clearance from the nursing department. Specially marked equipment will be used.

8. Inspection of the discharged patients' rooms to insure each newly admitted patient being received into a clean and properly prepared room.

9. All floors will be mopped daily, using a germicidal solution.

LAVATORIES - PATIENT BATHS - DAILY

1. Sweep and wash all flooring.
2. Wash and polish all mirrors, powder shelves and bright work.
3. Wash and disinfect all basins, bowls and urinals.
4. Wash all toilet seats.
5. Damp wipe all partitions, tile walls, dispensers, and receptacles.
6. Empty and clean paper towel receptacles.
7. Remove wastepaper and waste materials to a designated area in the building.
8. Fill toilet tissue holders.

All work will be performed except in those areas designated as "OFF LIMITS" or maintained by technical personnel.

LINEN DISTRIBUTION

We will perform this service, which includes:

(1) Count dirty linen (outgoing).
(2) Count incoming linen.
(3) Distribute clean linen.
(4) Keep accurate records so as to effect good control within and without the Nursing Home.

PATIENT LAUNDRY

1. Bring patient laundry to laundry room from central location on floors.

2. Wash, dry, mangle, and iron when necessary and fold all patient laundry.

3. Return laundry to central location on patient floors.

FLOOR MAINTENANCE

1. Composition tile, corridors and patient areas in the nursing home will be mopped daily, using germicidal solution.

2. All areas will be maintained so the premises will have a clean and bright appearance throughout.

CARPET CARE

1. All carpets will be vacuumed daily.

2. Carpets will be spot cleaned daily.

3. All carpeting will be shampooed as traffic patterns dictate and when necessary.

MONTHLY

All pipes, light fixtures, and high ledges will be dusted on a regular schedule. Critical areas will be done as often as necessary.

DIETARY

Staff and patient dining rooms will be maintained daily.

THERAPY

Occupational and physical therapy areas will be maintained daily.

TIME COVERAGE

Coverage will be seven (7) days per week, twent-four (24) hours per day.

GENERAL INFORMATION

1. All personnel will be uniformed and neat in appearance.
2. Public areas will be continually policed so that the building has a 'fresh look' at all times.
3. Slop sinks will be properly cleaned.
4. Equipment will be stored neatly upon completion of work.

SUPPLIES

We will furnish all materials and implements necessary for the general cleaning services set forth herein.

This does not include supplies such as hand soap in the lavatories, toilet tissues, plastic bags, paper towels, and all linens. These items are to be supplied by the QUEENS NASSAU NURSING HOME.

all supplies to be provided by Queens Nassau Nursing Home (L.R.

SUPERVISION

We will hire all personnel and supervision for the Housekeeping Department. We shall, during the course of operation, effect such changes as we deem advisable in order to establish an efficient department. In addition to the Supervisor on the staff of the Nursing Home, we will provide inspections by Supervisors from our general staff. All changes will be made only after discussion and mutual agreement with the Nursing Home Administration.

IN - SERVICE TRAINING

1. An in-service training program will be held once (1) a month for all housekeeping personnel.

2. Some of the subjects to be covered will include:

   (a) Safety in performance of duties.
   (b) Proper use of equipment
   (c) Proper maintenance of equipment.
   (d) Relationship between Housekeeping and Nursing Home staff.

3. All in-service training programs will be documented and signed with a copy going to the Nursing Home Administrator as required by the Department of Hospitals.

COST

The aforementioned services will be performed in the sum as outlined in Schedule A.

Schedule A: $13,021.44 is the cost per month when all floors are occupied.

Cycle Cleaning Corp. will staff and maintain areas in two phases.

Phase 1: Staff the nursing home with the required number of people to do the initial clean-up.

Phase 2: Add additional personnel as new floors areoccupied, and only after mutual agreement with the Nursing Home Administration.

This figure is based upon minimum wage and fringe benefits as set forth in the present agreement between the New York Metropolitan Nursing Home Association and Local 144. Should any change occur in these wages and benefits becuase of any new agreement between the New York Metropolitan Nursing Home Association and Local 144, we will be obliged to conform to any such agreement, and our entire contract price will be adjusted accordingly.

CYCLE CLEANING CORP. shall bill QUEENS NASSAU NURSING HOME on the first and fifteenth day of each month, and Queens NASSAU NURSING HOME shall make all payments to CYCLE CLEANING CORP. upon receipt of bill.

GENERAL INFORMATION

The specifications herein listed are more for outline of duties rather than an attempt to be all inclusive. It is clearly the intent of the company to perform all such duties as would be performed by the Housekeeping Department. The Housekeeping Department will operate as a part of the Nursing Home staff.

Our employees are covered by Workmen's Compensation, Public Liability and Property Damage Insurance.

This contract will adhere to all existing Department of Hospitals and other health agency regulations. The undersigned will pay all City, State, and Federal taxes, and account for all persons engaged to perform the work and services of this contract under this agreement.

This contract will remain in effect for a period of two (2) years. This contract may be cancelled after one (1) year by either party by giving sixty (60) days notice in writing and by certified mail.

Respectfully submitted,

CYCLE CLEANING CORP.

effective 11/4/73

BY Larry Roth
LARRY ROTH, PRESIDENT

ACCEPTED FOR:

QUEENS NASSAU NURSING HOME

BY _____

TITLE _____

DATE _____

ACCEPTED FOR:

CYCLE CLEANING CORP.

BY Larry Roth

TITLE Pres.

DATE 10/30/73

Whereupon, RITA FRESTON, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Rita Freston.

Q State your address?

A Six Vermont Street, Melville, New York.

Q What is your position at Queens-Nassau Nursing HOme?

A I was Director of Nurses.

Q And how long did you hold that position?

A Approximately six months.

Q From when to when?

A From March the Fourth to September 16th.

MR. ENGELHARD: If your Honor please, I can't hear the witness.

JUDGE DIXON: Speak up, please.

A From March the Fourth to September the 16th.

MR. ENGELHARD: Thank you.

BY MR. COFFEY:

Q Of 1974?

A 1974.

Q Now, Miss Freston, while you were Director of Nursing Services during May and June of 1974, did --

JUDGE DIXON: Wait a minute now.

You mean 1973 or --

THE WITNESS: To September of 1974.

JUDGE DIXON: Not December?

THE WITNESS: No.

JUDGE DIXON: Thank you.

BY MR. COFFEY:

Q During May and June of 1974 and prior to the election of June 12th, 1974, did you see any union agents on the premises of Queens-Nassau Nursing Home?

A Yes, I did.

Q Can you tell us about that?

A I saw Mrs. Allen, I believe was on a Sunday morning in the staff dining room. I had come in and she was having coffee.

MR. ENGELHARD: I'm sorry, I just can't hear.

JUDGE DIXON: I can almost hear her myself.

Who is it you saw?

THE WITNESS: Mrs. Allen.

JUDGE DIXON: Allen?

THE WITNESS: Yes.

BY MR. COFFEY:

Q Was she a representative of Local --

A She was a representative of Local 144.

Q I see.

Did you --

A. And I also saw Mr. Goodman at the pay phone in the hall. He was also a representative of 144.

Q. Was that on the same occasion or different occasions?

A. No; that was on a different occasion.

Q. On the day that you saw Mrs. Allen, when was that?

A. That was on a Sunday.

Q. Can you pin it down in time?

A. It was --

Q. What month was it?

A. It was approximately -- it was between nine and 9:30 in the morning. It was --

Q. During the --

A. It was towards the end of May.

Q. I see.

When Miss Watson was having coffee in the dining room, who was present?

A. I believe Mrs. McNab was and Mrs. Watson.

Q. And they were having coffee with her?

A. Yes.

MR. ENGELHARD: I'm sorry, this is McNab and --

THE WITNESS: And Mrs. Watson.

MR. ENGELHARD: Thank you.

BY MR. COFFEY:

Q. And on the day --

MR. KARASSIK: I'm sorry.

May I have the question and answer repeated, please?

JUDGE DIXON: Could you read it back, please?

(Record read.)

MR. KARASSIK: I object to the question because it assumes a fact not in evidence. I don't think we had any prior testimony about a Mrs. Watson.

JUDGE DIXON: He asked who was there and she is naming them.

MR. KARASSIK: He said who was there when Mrs. Watson was having coffee. I never heard the name Watson testified before.

MR. COFFEY: When Mrs. Allen was having coffee.

MR. KARASSIK: Well, correct your question.

MR. COFFEY: Pardon me.

BY MR. COFFEY:

Q Who was present when Mrs. Allen was having coffee in the dining room?

A Mrs. Watson and Mrs. McNab.

Q Who were they?

A Supervisors.

Q For whom?

A Queens-Nassau Nursing Home. Or, they are supervisors.

Q I see.

When did you see Mr. Goodman on the premises?

A. It was during that same period of time. It was during -- it was on a weekday.

Q. In what month?

A. The [illegible] of May.

Q. Of 1974?

A. Of 1974, yes.

Q. And what was he doing?

A. He was at the pay phone.

Q. Where?

A. In the lobby.

Q. I see.

Besides yourself, who else was present when he was there?

A. This, I don't remember.

Q. Now, how long was Mr. Goodman at the pay phone?

A. I can't tell you any definite time.

Q. And what did he do after he left the pay phone?

A. I believe he went upstairs, but I -- I didn't see this.

MR. KARASSIK: I move to strike the answer.

JUDGE DIXON: All right, I'll strike it

BY MR. COFFEY:

Q. What did you see him do?

Did he go to leave or --

A. He walked in that direction, but he could have taken the elevator. I did not follow him.

MR. KARASSIK: I move to strike the answer again as conjecture.

JUDGE DIXON: I'll strike the "Could have" part of it.

MR. KARASSIK: Thank you.

BY MR. COFFEY:

Q Now, Mrs. Freston, did there come a time when you informed anyone in the nursing home of the presence of these people in the home?

A Yes.

I mentioned it to Mr. "K".

Q Who is Mr. "K"?

A He is the administrator of Queens-Nassau Nursing Home.

Q What did you tell him?

A Just that I had seen Mrs. Allen and that I had seen Mr. Goodman at the pay phone.

Q And did he tell you to -- and did he tell you anything to stop them?

A No, he didn't tell me anything, sir.

MR. COFFEY: No further questions, your Honor.

JUDGE DIXON: I don't care what order you go in.

CROSS-EXAMINATION

BY MR. KARASSIK:

Q Mrs. Freston, you say that you saw Mrs. Allen toward the end of May having coffee?

A Right.

A. I couldn't see from that distance if he was wearing one.

Q. You had no way of independently identifying Mr. Goodman as a representative of Local 144; isn't that so?

A. No.

Q. Isn't that so?

A. I had no way of identifying him.

MR. ENGELHARD: No further questions.

MR. KATZ: No questions.

JUDGE DIXON: All right.

You may step down.

(Witness excused.)

MR. COFFEY: If I could have a few seconds of Honor's indulgence.

General Counsel calls Mary McNab to the stand.

Whereupon, MARY McNAB, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q. What is your full name?

A. Mary McNab.

Q. What's your home address?

A. 424 Beach 66th Street, Arverne, New York 11692.

Q. Mrs. McNab, whom do you work for?

A. Queens-Nassau Nursing Home.

Q. And what is your position there?

A. Nursing Supervisor.

Q. Did you ever see any representatives from any union on the premises of Queens-Nassau Nursing Home?

A. Once I saw Mr. Goodwin on the premises.

Q. Mr. Goodman or Goodwin?

A. Mr. Goodwin.

MR. ENGELHARD: I'm sorry, Goodwin?

THE WITNESS: I get them mixed up most of the time.

BY MR. COFFEY:

Q. Well, is the gentleman present in the Court?

A. Yes, he is.

Q. Can you point him out to us?

A. This gentleman (Indicating.)

Q. This gentleman here (Indicating.)

A. Yes.

MR. COFFEY: Can you state your name?

MR. GOODMAN: Marvin Goodman.

BY MR. COFFEY:

Q. And when did you see Mr. Goodman in the nursing home?

A. As far as I remember, it was sometime in May.

Q. Of 1974?

A. Yes.

Q. Where was he?

A. On one of the stations.

Q. Which station?

A. Three south.

Q. This is a nursing station?

A. A nursing station.

Q. I see.

What was he doing at the time?

A. Speaking to one of the nurses.

Q. Speaking to one of the nurses?

A. Yes.

Q. Do you remember which nurse he was speaking to?

A. Mis McQueen.

MR. KARASSIK: I didn't hear that, please.

THE WITNESS: Miss McQueen.

BY MR. COFFEY:

Q. And did you hear what they had to say to each other?

A. No.

Q. Did anyone give you any instructions in regard to agents of 144 who you found in the nursing home?

A. No.

Q. Did you tell Mr. Goodman to leave?

A. No.

Q. Did you tell him anything?

A. No.

The most I could have said to him was good morning, as

stand.

Whereupon, ARDIS WATSON, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Ardis Watson.

Q What's your home address?

A 84-10 Rockaway Beach Boulevard, Rockaway Beach, New York.

Q Who is your employer?

A Queens-Nassau Nursing Home.

Q And how long have you been employed there?

A I was originally employed October 8th, 1973.

Q And are you still employed there?

A Yes, I am.

Q And what's your -- what do you do for them?

A I'm the Acting Assistant Director of Nurses.

Q Have you ever seen any representatives of any union on the premises of Queens-Nassau Nursing Home?

A Yes, I have.

Q Whom did you see?

A I saw Mrs. Allen and I saw Mr. Goodman. I've seen other people with Mr. Goodman, but I don't know their names and I

don't know if they were affiliated with the union or not.

Q Do you see any of the people that you saw in the Court at this time?

A I remember the face of the man sitting next to you. I don't remember if he was with Mr. Goodman or not.

I, also, remember --

MR. KARASSIK: I'm sorry, who are you identifying, please? Could you point him out?

THE WITNESS: The gentleman who is speaking to me now, I remember the face of the gentleman sitting next to him.

MR. KARASSIK: Would he identify himself for the record, please, your Honor?

THE WITNESS: But I don't remember if he was with Mr. Goodman or not. But I do remember the face.

JUDGE DIXON: Wait a minute.

Who is she referring to?

THE WITNESS: This gentleman here with the blue tie and the plaid suit with the vest.

MR. KATZ: That's William Morales, a representative of Local 1115.

JUDGE DIXON: All right.

BY MR. COFFEY:

Q Do you remember seeing this gentleman in the hall?

A I remember his face.

Q But do you remember seeing him in the home?

A I believe so.

Q During May and June of 1974, Mrs. Watson, did you see any representatives of Local 144 on the premises of the nursing home?

A I don't remember the exact months, but I have seen representatives of 144 on the premises.

MR. KARASSIK: Your Honor, I move to strike the answer as being too vague as to time. It encompasses a period of time that is not part of the Complaint in this action, and we have no way of --

JUDGE DIXON: Well, it's going to have no probative value anyhow if that's what it is. I'll let it stand.

BY MR. COFFEY:

Q Mrs. Watson, I direct to you your statement to the Board.

Would you please read --

MR. KARASSIK: He hasn't laid a ground work for her reading any -- please, Mrs. Watson.

MR. COFFEY: She said she couldn't remember the months.

MR. KARASSIK: Is he offering the document then to refresh her recollection?

MR. COFFEY: Yes, I am.

MR. KARASSIK: I would like to see the document.

MR. COFFEY: Of course.

(Handing.)

have seen some of the copies and they are very difficult to read.

JUDGE DIXON: Well, I hope they can make copies we can read. It wouldn't serve any purpose if they don't.

Please proceed.

BY MR. COFFEY:

Q Where do you recall seeing agents of Local 144 in the home?

A Okay.

I recall seeing Mrs. Allen in the lobby. I recall seeing Mrs. Allen in the nursing office when Mrs. Joyce was Director of Nurses. I recall seeing -- I really don't remember seeing her on the floors upstairs.

Q How about Mrs. Goodman?

A Mr. Goodman?

Q Yes.

A Yes, I recall seeing him on the floors. Exactly where I'm not sure. But I have seen him on the floors.

Q Do you recall when the N.L.R.B. election took place in June of 1974?

A More or less.

I believe I was absent that day, but I recall that it was being held, yes.

Q In the month prior to that N.L.R.B. election, Mrs. Watson, do you recall seeing 144 agents on the premises of

the home?

A. I'm not sure.

I believe so, but I'm not sure. I can't tell you definitely yes.

Q. In the six weeks prior to the election, Mrs. Watson, do you recall seeing 144 agents in the home?

A. Possibly, but I'm really not sure.

Q. Did you ever tell 144 agents to leave the home?

A. No.

Q. Did anyone ever give you any instructions in regard to them?

A. No.

MR. COFFEY: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. KARASSIK:

Q. Mrs. Watson, did you know Mrs. Allen prior to May and June of 1974?

A. I was introduced to Mrs. Allen by Mrs. Joyce.

Q. Do you recall when that was?

A. Probably October or November of 1973.

Q. Of 1973?

A. Yes.

Q. Were you ever given any instructions by any supervisor regarding allowing or preventing any union representatives on the premises of the Queens-Nassau Nursing Home?

(Witness excused.)

MR. COFFEY: General Counsel calls Daisy McQueen to the stand.

Whereupon, DAISY McQUEEN, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Mrs. Daisy McQueen.

Q What's your home address?

A 116-40 New York Boulevard, New York, New York.

Q Were you ever employed by Queens-Nassau Nursing Home, Mrs. McQueen?

A Yes.

Q From when to when?

A From October of '73 through July of '74.

Q What were you employed as?

A As a Licensed Practical Nurse.

JUDGE DIXON: What was that?

THE WITNESS: A Licensed Practical Nurse.

JUDGE DIXON: Thank you.

BY MR. COFFEY:

Q During May and June of 1974, Mrs. McQueen, and prior to the election of June 12th, 1974, did you see any re-

presentatives of any union on the premises of Queens-Nassau Nursing Home?

A Yes.

Q Can you tell me when and who and what happened?

A Yes.

It was towards the end of May that I saw Mrs. Allen.

Q Where did you see her?

A On my floor.

Q Which floor is that?

A The third floor.

Q And did she speak to you?

A Yes.

Q What did she say to you and what did you say to her?

A She spoke to me in reference to my campaigning for --

MR. ENGELHARD: I'm going to object, your Honor, on the grounds that this witness is an LPN. I don't believe that the charges involved in this case, or the objections involved in this case, relate to LPN's.

Consequently, it would be immaterial and irrelevant as to the conversations that were had with Mrs. McQueen.

JUDGE DIXON: You mean that she couldn't give evidence as to any of the situations involved herein regardless of what her title is?

MR. ENGELHARD: Well, I understand her stating that she saw so-and-so on the premises and on a certain floor but only

with regard to incidents revolving around the maids and the porters who are the subject of the petition and the subject of the Unfair Labor Practice charge.

JUDGE DIXON: What's your position on that?

MR. COFFEY: Your Honor, our position is that Local 144 people were around the home on numerous occasions doing numerous things in regard to union activities, and they were not prevented from doing so. I think Mrs. McQueen has testimony that could show some -- that could shed some light on where these agents were and what they were doing. I think that's relevant to our position in this matter.

JUDGE DIXON: Well, I'm going to overrule the objection. I'll let her testify.

Proceed.

BY MR. COFFEY:

Q Go ahead, Mrs. McQueen. What did Mrs. Allen say to you and what did you say to her?

A Mrs. Allen spoke to me in reference to my campaigning for --

MR. ENGELHARD: I'm sorry, I can't hear.

A. Mrs. Allen spoke to me in reference to my campaigning for Local 1199.

Q What did she say in reference to that?

A She asked -- she told me that she had heard that I had been campaigning for Local 1199.

Q And what else did she say to you?

JUDGE DIXON: What's 1199?

MR. COFFEY: That's another union, seeking to represent --

JUDGE DIXON: Oh, all right.

MR. COFFEY: -- the nurses.

JUDGE DIXON: There's another union in the picture then. Okay, go ahead.

A Excuse me, what was your question?

Q Continue with what Mrs. Allen told you and what you told her.

A Oh, I told Mrs. Allen that I haven't heard from them in awhile.

MR. ENGELHARD: I'm sorry, I just can't hear.

A I told Mrs. Allen that I hadn't heard from her -- from her union in a while and I was told to call this union; and I did.

JUDGE DIXON: By "This union," you mean Local 1199?

THE WITNESS: Yes.

JUDGE DIXON: I see.

BY MR. COFFEY: Did you

Q Did you say anything about 1199?

A Oh, And I told Mrs. Allen that I had heard that Local 1115 was in the picture now and that we didn't want them.

Q And what did Mrs. Allen tell you at this point?

A. I don't remember.

Q. Do you recall anything she said to you?

A. After that, I don't remember. What are you referring to?

Q. Did she mention anything else about 1115?

A. I draw a blank. I don't remember her stating anything.

Q. Do you remember her mentioning anything about a conflict that 144 was having with 1115?

MR. KARASSKI: Mr. Hearing Officer, how much leading must we accept in this hearing?

JUDGE DIXON: Well, she say she doesn't remember. I suppose he can attempt to refresh her recollection by leading her a little bit at this point.

A. I don't remember what I said, I really don't.

Q. You don't remember what you said other than that?

A. Or what she said, no.

MR. COFFEY: Would you please mark this as General Counsel's Exhibit #9 for identification.

(The above-mentioned was received and marked as General Counsels' Exhibit #9 for identification.)

BY MR. COFFEY:

Q. Before we go into this further, do you recall seeing anyone else from Local 144 on the premises of the Queens-Nassau Nursing Home?

A. Yes.

Q. Who did you see?

A. Mr. Goodman.

Q. And when was this?

A. It was towards the first of June, the first part of June.

Q. And where did you see him?

A. On my floor.

Q. And what did you say to him and -- what floor is that?

A. The third floor.

Q. I see.

What did you say to him and what did he say to you?

A. I -- he was handing out some leaflets. I told him that I didn't want any cards from his union.

MR. ENGELHARD: I'm sorry, I just can't hear you.

A. He was handing out some leaflets. I told him that I didn't want any part of his union.

JUDGE DIXON: Did you get that? Wait a minute.

MR. ENGELHARD: I think she said she told him she didn't want any part of his union.

JUDGE DIXON: Yes.

BY MR. COFFEY:

Q. Is that what you told him?

A. Yes.

Q. Who was he handing out the leaflets to?

A. To the employees.

Q. Do you know any particular employees?

A. No, I can't.

Q. Do you remember what classifications they were that he was handing them out to?

A. Well, they had to be aides, orderlies and porters.

MR. KARASSIK: I move to strike the answer ans to what it had to be.

BY MR. COFFEY:

Q. Was he giving out leaflets to porters, as you recall?

JUDGE DIXON: Do you recall who he was giving the leaflets to?

THE WITNESS: Yes, I recall the employees being there. As to exactly what employee was there on that day --

JUDGE DIXON: I don't mean the individual employee, the type of employees.

THE WITNESS: Their positions, yes.

JUDGE DIXON: And what positions were they?

THE WITNESS: They were porters, aides and an orderly on my floor.

BY MR. COFFEY:

Q. In reference to your conversation with Mrs. Allen, I direct your attention to General Counsel's Exhibit #9 for identification.

Do you recall this statement that you signed --

A. Yes.

Q. -- for the Board?

calling in another union, I would only make the situation that much more difficult.

Q Okay.

MR. COFFEY: No further questions, your Honor.

MR. KAYSER: May I see the statement?

MR. KARASSIK: Yes, may I see the statement, too.

MR. COFFEY: Of course.

(Handing.)

CROSS-EXAMINATION

BY MR. KARASSIK:

Q Mrs. McQueen, at the time that you spoke to Mrs. Allen at the end of May during a conversation which occurred on the third floor, had you already contacted District 1199?

A Yes.

Q And was your purpose in contacting them to organize the employees of the Queens-Nassau Nursing Home for that particular union?

A. Yes.

Q And was the reason that you contacted 1199 your dissatisfaction with the organizing activities of Local 144 at the Queens-Nassau Nursing Home up to that time?

A Yes.

Q And you had heard, had you not, that Local 1115 had received some signed authorization cards from employees of the Queens-Nassau Nursing Home?

A Yes.

Q That's also correct, isn't it true?

A Yes.

Q So that, to your knowledge, Mrs. McQueen, the union that had been engaging in the greatest organizing efforts at that particular time was in fact Local 1115; is that not true?

A I --

MR. COFFEY: Objection, your Honor.

What's the relevance of this?

MR. KARASSIK: Oh, my God.

JUDGE DIXON: Well, this is cross examination.

Overruled.

A May I have your question again?

Q Yes.

At the time that Mrs. Allen spoke to you at the end of May on the third floor of the Queens-Nassau Nursing Home, after you had contacted 1199 and at a time when you were aware that Local 1115 had already obtained signed authorization cards from employees of the Queens-Nassau Nursing Home, to the best of your knowledge, the greater organizing activities that had been going on in that facility had been done by Local 1115 and not 144.

Isn't that a fair statement?

A No.

Q. Which -- strike that.

What activities were you aware of that 1115 had been engaging in at that particular time, if any?

A. They had been getting cards signed.

Q. And where were they getting cards signed?

A. Mostly in the kitchen.

Q. Had they physically come into the building?

A. Truthfully speaking, I don't -- I had never met any of the representatives from 1115 prior to this. This is only what I was told.

Q. Who told you?

A. I --

MR. COFFEY: Objection, your Honor.

This is hearsay.

MR. KARASSIK: I didn't ask for the contents of the statements, your Honor.

JUDGE DIXON: Overruled.

A. I was told by other employees.

Q. Employees working in the kitchen?

A. Yes.

Q. Did you attempt to solicit membership of any of the employees of Queens-Nassau Nursing Home on behalf of Local 1199?

A. Yes.

Q. Did you do that in the building?

A. Yes.

Q. Did you do it on the third floor?

A. Yes.

Q. Which was -- that was your station, was it not?

A. Right.

Q. Did you do it on any floors other than your station?

A. Yes.

Q. Did you do it in the dining room?

A. Yes.

Q. What other areas did you do it in?

A. Oh, all five floors and the dining room.

Q. So you had complete access to the entire nursing home to solicit membership for Local 1199 during May and June of 1974?

A. Yes.

MR. COFFEY: Your Honor, this is completely outside the scope of direct.

JUDGE DIXON: Well, not definitely. She mentioned 1199 in her direct.

BY MR. KARASSIK:

Q. Were you, in May and June, familiar with any of the representatives of Local 1115?

A. No.

Q. Were there any individuals inside of the nursing home distributing literature on behalf of Local 1115?

A No -- inside the nursing home, you said?

Q Inside.

A No.

Q Did anyone from Local 1115 -- strike that question, please.

You were an LPN on the third floor?

A Yes.

Q What was your position?

A I was --

Q Were you a floor supervisor or a floor duty nurse?

A My title was Charge Nurse.

Q You were in charge of the floor?

A Yes.

Q Was there a registered nurse on duty at the time that you were on duty at that station?

A Yes.

Q What shift did you work?

A Seven to three.

Q And what station is it called?

What's the name of the station?

A Three south.

Q Three south?

A That's correct.

Q Now, Mrs. McQueen, on the 7:30 shift -- that was your shift?

A Seven to three.

Q Seven to three?

A Yes.

Q Seven a. m. to three p. m.?

A Yes.

Q On the seven a. m. to three p. m. shift, was there a RN stationed at three south?

A No.

Q So you were the only licensed personnel on three south from seven a. m. to three p. m.?

A Right.

Q Did anyone ever ask you permission to solicit on behalf of any union at three south?

A No.

Q Did you ever deny to anyone the right to speak to the employees on three south about any union?

A No.

Q To your knowledge, Mrs. McQueen, were any of your supervisors or any one in management aware of the fact that you had actively campaigned for Local 1199?

A Yes.

Q And who were those supervisors?

A Mrs. Watson and Mrs. McNab.

Q And did Mrs. Watson at anytime ever give you any instructions about your activities in that direction?

A. No.

Q. Did they ever deny you the right to distribute campaign literature?

A. No.

Q. Did McNab -- that was Watson.

Did McNab ever give you any instructions about your activities on behalf of Local 1199?

A. No.

Q. Did she ever direct you not to campaign on behalf of Local 1199?

A. No.

Q. Did she ever direct you to campaign on behalf of any union?

A. No.

Q. Did McNab ever direct you to --

A. No.

Q. -- not to campaign on behalf of any union?

A. No.

Q. Let me try to finish the question.

A. I'm sorry.

Q. What did your activities on behalf of Local 1199 involve?

Did you specifically give out literature?

A. No.

I had cards signed, I got cards signed.

Q You had actual union authorization cards signed?

A Yes.

Q I see.

Did Mrs. Allen engage in any -- did Mrs. Allen engage in any conversation with anyone else on your -- on three south, your station, at the time of your conversation with her at the end of May?

A No.

Q Did she solicit any membership in 144 at the time of your conversation --

A No.

Q -- from any other employees --

A No.

Q -- in the nursing home, to your knowledge?

A No.

Q Did she distribute any literature at that time?

A No.

Q Did you deny to Mrs. Allen, the right to solicit membership on behalf of Local 144 at your station?

A No.

MR. KARASSIK: I have no further questions.

MR. KAYSER: No questions, your Honor.

CROSS-EXAMINATION

BY MR. ENGELHARD:

Q Mrs. McQueen, did you tell Miss Chait --

A. That I had campaigned for Local 1115?

Q. That's right.

A. No.

Q. Did you ever hear of a local known as Local 4?

A. Yes.

Q. Is that the Teamsters Union?

A. I don't know what union that is, but I've heard of it.

Q. But you've heard of Local 4?

A. Right.

Q. Did you hear of Local 4 back in December of 1973?

A. Yes.

Q. And did you, on behalf of Local 4, solicit authorization cards?

A. No, I didn't.

Q. Did you see people from Local 4 in the building?

A. Yes.

Q. Where did you see them?

A. On my floor. At that time, I was stationed on one south.

Q. One south?

A. Yes.

Q. And did you see these people from Local 4 -- strike that.

How many people did you see from Local 4?

A. I remember seeing two different persons.

Q Did they speak to you?

A Yes.

Q And on how many different occasions did you see these people?

A Several.

Q And were they -- did you see them handing out any kind of cards or literature?

A Yes.

Q And to whom did they hand them out?

Do you recall?

A I received one. The aides on my floor.

Q How about the porters?

A The porters received one, yes.

Q And the orderly?

A I can't say definitely.

Q Did you sign a card for Local 4?

A Yes, I did.

Q Was it during your working hours?

A Yes.

Q And did you report this to anyone, to any of your supervisors?

A Did I report it?

Q Yes, to any of your supervisors or to anyone from management?

A I don't know if you can use the term "report," but it

came up in a discussion later.

Q With whom?

A. With Miss Levin,

Q And who is Miss Levin?

A. She was a supervisor at the time.

Q She was your supervisor?

A. Yes.

Q And was she a supervisor of the orderly and the maid at the time --

A. Yes.

Q -- and the nurses' aides?

A. Yes.

Q And did you tell her that you had seen people from Local 4 on the floor distributing literature and cards?

A. Yes.

Q Did you receive any instructions from her with regard to people from Local 4 being on the floor and distributing this literature and the cards?

A. Did I receive any instructions?

Q Yes, from her.

A. No.

MR. COFFEY: Can we find out when all this happened?

MR. ENGELHARD: All right.

BY MR. ENGELHARD:

Q When did this occur, Mrs. McQueen?

A This was in '73, I think, November or December of '73.

Q Could it also have been the early part of '74, like January?

A Yes, it could have been.

Q Could it have been in February of '74?

A It could have been.

MR. ENGELHARD: I have no further questions.

Thank you.

MR. KATZ: No questions.

REDIRECT-EXAMINATION

BY MR. COFFEY:

Q Did you ever see anybody from Local 4 talking to Mrs. Wield?

A Yes.

Q Were they arguing when you spoke to them -- when they spoke to each other?

A Not with Mrs. Wield.

Q Did you see arguments between Local 4 people and anybody?

A Miss Levin.

Q Miss Levin?

A Yes.

Q What were the nature of these arguments?

A I don't remember. I just overheard the voices in the dining room.

BY MR. COFFEY:

Q Have you ever seen Local 4 people ejected from the home?

A. No.

MR. COFFEY: No further questions.

MR. KARASSIK: No further questions.

MR. KAYSER: No questions.

MR. KATZ: No further questions.

MR. ENGELHARD: Nothing further, your Honor.

JUDGE DIXON: All right.

You may step down.

(Witness excused.)

MR. KARASSIK: May we go off the record for a minute?

JUDGE DIXON: All right.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: General Counsel calls Lucy Valazquez to the stand.

Whereupon, LUCY VALAZQUEZ, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A. Lucy Valazquez.

Q. What's your home address?

A. 1011 Nameoke Street, Apartment 2E, Far Rockaway, New York.

Q. Lucy, were you employed at Queens-Nassau Nursing Home?

A. Yes.

Q. As what?

A. -- I work as an aide but with a physical therapist.

Q. From when to when were you employed there?

A. I work as an aide with a physical therapist.

Q. And when were you employed there?

A. Before May, before May.

Q. Before May?

A. Yes.

I've been working there for about six or eight months.

Q. Were you working there in May of 1974?

A. Right, I was.

Q. And were you working there in June of 1974?

A. Yes.

Q. During May and June of 1974, and prior to the election of 6-12-74, did you see any agents of any union on the premises?

A. Yes, I did.

Q. Whom did you see, where did you see them and when did you see them?

A Between May, right, I saw a representative from Local 144 in the lobby, but I was only passing by and I saw them talking to an aide or an orderly.

Q Do you recognize any -- the gentleman that you saw?

A Yes.

It was Mrs. Allen.

Q It was Mrs. Allen?

A Yes.

Q And was that on one occasion in May?

A Twice I saw her.

Q Both times in May?

A Right.

Q I see.

Did you listen to what they were talking about?

A No.

I was just going by and I just saw.

Q Okay.

MR. COFFEY: No further questions.

CROSS-EXAMINATION

BY MR. KARASSIK:

Q Is the -- I assume the lobby is right adjacent to the entrance and exit to the home --

A Right.

Q -- is that correct?

A Yes.

A. It could have, yes.

Q. Where was that in the lobby or the Physiotheraphy Room?

A. No; it was right in the door of the Physiotheraphy Room. I had just got in and he tried to give me a card and speak to me.

MR. ENGELHARD: No further questions.

MR. COFFEY: No further questions, your Honor.

RECROSS-EXAMINATION

BY MR. KARASSIK:

Q. Are any vistors allowed in the Physiotheraphy Room?

A. Only if the physiotherapist says it's okay.

Q. Had the physiotherapist said it was okay --

A. No, he wasn't in yet.

MR. KARASSIK: Thank you.

JUDGE DIXON: Is that all?

MR. COFFEY: No further questions.

MR. KARASSIK: That's all.

MR. ENGELHARD: No further questions.

JUDGE DIXON: All right.

You can step down.

(Witness excused.)

MR. COFFEY: General Counsel calls Virginia Allen to the stand.

Whereupon, VIRGINIA ALLEN, was called as a witness and having been first duly sworn by the Administrative Law Judge,

was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Virginia Allen.

Q What's your home address?

A 318 Harold Street, Staten Island, New York.

Q Who do you work for, Mrs. Allen?

A Local 144.

Q And what do you do for them?

A Business Representative.

Q On June the fifth of 1974, Mrs. Allen, were you in Queens-Nassau Nursing Home?

A I might have been.

Q Did you tell -- on 6-8-1974, were you in Queens-Nassau Nursing Home?

A There is a possibility I was.

MR. COFFEY: Your Honor, I'd like to declare this witness a hostile witness.

MR. KARASSIK: I don't think the witness has --

MR. COFFEY: I would like to ask leading questions.

MR. KARASSIK: I don't see that the witness has showed or manifested in any way that she is hostile.

JUDGE DIXON: Not yet.

BY MR. COFFEY:

Q Is there a possibility that you weren't present on those days in the home?

A. I'm only testifying to what I know and I don't know. I could have said I don't know.

Q You don't know whether --

A. And I don't remember exact dates. That's why I said I could have possibly been there.

Q I see.

MR. COFFEY: Your Honor, We'd like to declare this witness a hostile witness.

MR. KARASSIK: I think the witness is being very helpful, your Honor.

MR. COFFEY: She's saying she doesn't know something.

MR. ENGELHARD: If your Honor please, she's being as candid as possible.

JUDGE DIXON: Well, I don't think you've demonstrated hostility at this point, Mr. Coffey.

MR. COFFEY: All right.

JUDGE DIXON: Try a little more.

MR. COFFEY: Mark this as General Counsel's Exhibit #10 for identification, please.

(The above-mentioned was received and marked as General Counsel's Exhibit #10 for identification.)

BY MR. COFFEY:

Q I ask you to read this portion of it.

(Handing.)

MR. KARASSIK: You know, I think we're running ahead of ourselves, your Honor. I think first we might have the document identified.

JUDGE DIXON: Did you have it identified?

MR. COFFEY: I said mark it for identification.

JUDGE DIXON: Okay.

MR. ENGELHARD: That will be number ten?

JUDGE DIXON: I believe so.

A. Excuse me, please.

Q. You don't have to read every --

A. I just want to know if it's a statement I gave and if I did give the statement and it states that date. It was in my diary, and it is correct.

Q. So you were in Queens-Nassau Nursing Home on June 5th, 1974?

A. Yes.

Q. And what were you doing there?

A. Perhaps talking to employees.

Q. Perhaps or were you talking to employees?

A. Talking to employees.

Q. And what were you talking to them about?

A. Joining the union.

MR. ENGELHARD: I'm sorry, I can't hear you.

THE WITNESS: Joining Local 144.

BY MR. COFFFY:

Q And how -- strike that.

Mrs. Allen, did you advise them of any meetings of Local 144?

A Yes, I could have.

Q Did you or did you not?

A I -- my recollection of the date of the meetings that we had at that particular time --

Q My question was --

A -- are not clear in my memory, so I could have.

Q I refer you back to your statement.

MR. KARASSIK: Your Honor, do we have that marked?

JUDGE DIXON: It's marked.

MR. KARASSIK: I don't know what's happening here. It's marked as what?

JUDGE DIXON: General Counsel's Exhibit #16 for identification.

MR. KARASSIK: Thank you.

BY MR. COFFEY:

Q Have you read the portion of the statement that I referred to you?

A Yes.

Q Did you talk to employees about a 144 meeting to be held in a bar on June 10th, 1974?

A Yes, I did.

Q Now, on June 8th, 1974, were you on the premises of Queens-Nassau Nursing Home?

A It's possible.

Q Only possible or were you there?

JUDGE DIXON: Well, I'm going to let you cross examine this witness.

Go ahead.

We don't have to go through all of this.

A The reason why I'm saying that it's possible, there are many dates during September and June and even to date that I have been on the premises of the nursing home. I don't know the exact dates unless I have given it in a statement and I gave those dates --

Q So there were many dates between September and June --

A Yes.

Q -- September of 1973 and June of 1974 that you were present on the premises of Queens-Nassau Nursing Home?

A On the premises or in front of the building or --

Q How about on the premises itself?

A There is a possibility, yes.

Q Now, I refer you to your statement, and I ask you to read this.

(Handing.)

MR. KARASSIK: May we have a copy of the statement, please?

A. This is Page 3, Paragraph 2.

MR. KAYSER: Any other copies?

MR. COFFEY: I'm sorry.

A. Yes, that is correct.

Q. You were there on -- and where were you on that day on the premises of Queens-Nassau Nursing Home?

A. Probably in the lobby by the time clock, the sign-in book.

Q. And what were you doing there?

A. Talking to the RN's.

Q. Talking to the RN's?

A. Anybody who passed by.

Q. Were you talking to employees?

A. Yes.

Q. Talking to porters?

A. If they passed by, yes.

Q. I see.

What were you telling them?

A. Just talking in general.

Q. Were you talking about the meeting of June 10th?

A. I could have been.

Q. I refer you to your statement of --

MR. KARASSIK: Where are you referring her to, sir?

THE WITNESS: Second paragraph, Page 3.

A. Yes.

Q Okay.

And you -- so you were talking to employees about the meeting of June 10th on June 8th --

A Yes.

Q -- in the lobby?

A Yes.

Q Asking them to come to the meeting?

A Yes.

I think that was the midnight shift, the changing of shifts. I was talking to the afternoon employees and also the night employees.

MR. COFFEY: No further questions, your Honor.

If your Honor will note, my questions confined themselves to the dates 6-5 and 6-8, 1974.

JUDGE DIXON: All right.

MR. COFFEY: And about her activities in the home on those dates.

MR. KARASSIK: Your Honor, I'll need about five minutes to read this statement.

JUDGE DIXON: We'll take a short recess at this time.

(Recess taken at 12:15 P. M.)

(Resumed at 12:30 P. M.

JUDGE DIXON: Back on the record.

Go ahead.

MR. KARASSIK: The Respondent Queens-Nassau Nursing Home

(P. M. Session started at 1:35 P. M.)

JUDGE DIXON: On the record.

MR. COFFEY: Do you want me to call the next witness, your Honor?

JUDGE DIXON: Yes.

MR. COFFEY: Okay.

General Counsel calls Morris Wilkinson to the stand.

Whereupon, MORRIS WILKINSON, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A. Morris Wilkinson.

Q. Where do you reside, Mr. Wilkinson?

A. 5441 Almeda Avenue, Far Rockaway, Arverne, New York.

Q When were you hired by Queens-Nassau Nursing Home, Mr. Wilkinson?

A. October the 29th.

Q. ?at year?

A. 1973.

Q. As a porter?

A. Yes.

Q. And how long was it before -- were you paid by Queens-Nassau Nursing Home?

A. In the beginning, yes.

Q. Did there come a time when you were paid by someone else?

A. Yes.

Then Cycle came in and took over the porters.

Q. About how long after that?

A. Maybe the next month or so.

Q. I see.

Mr. Wilkinson, do you recall any incidents where -- I withdraw the question.

Do you ever recall Mr. Gordon, of Local 4, being in Queens-Nassau Nursing Home?

A. Yes.

Q. And he is a business representative of Local 4?

A. Yes, I think so.

Q. When do you recall seeing him there?

A. In December.

Q. Can you tell me the circumstances of your seeing him there and what happened?

A. Well, one time he came in there to -- into the employees' dining room, and I was in there. He wanted to talk to the employees.

Mrs. Wield and Miss Levin --

Q. Who are they?

A. They are RN's, supervisors, they told him to leave the

building or they would call the police.

Q Did he leave?

A. Yes, he left.

Q. Did you ever see him again?

A. Yes.

Q. When?

A. He came back another time, and Miss Levin had an argument with him and told him to leave. She got pretty loud with him and what-not.

Q. When was it that he came back the second time?

A. In December, also.

Q. And did he leave again?

A. Yes, he left.

MR. KARASSIK: Your Honor, I move to strike both questions and answers as being immaterial and irrelevant to the charges in the Complaint. They relate not only to a union that is not of interest in this matter but also to a period of time that's remote from the charges alleged in the Complaint.

JUDGE DIXON: What's your response?

MR. COFFEY: Well, your Honor, we've had testimony about other unions.

JUDGE DIXON: What do you want to do, show a practice or --

MR. COFFEY: Show a practice of how some people are

allowed free access to the home and other people aren't.

JUDGE DIXON: All right.

I'll let it stand.

BY MR. COFFEY:

Q Have you ever attended a meeting held by a labor organization at or near Queens-Nassau Nursing Home?

A I went to a 144 meeting.

Q Where was that held?

A Across the street in the bar.

Q Across the street from the home?

A Yes.

Q And when was that?

A In April.

Q Of '74?

A Of '74, yes.

Q How did you find out about this meeting?

A Well, I heard the employees talking about it, and I saw a sign in the employees' dining room.

Q A sign in the dining room?

A You know, like a poster or whatever you want to call it.

Q What did it say?

A It said they were having a meeting across the street and it had address and the time and whatever.

Q And how long was that hanging in the employees' dining room?

A. I don't recall.

Q. How long before the meeting did you see it in there?

A. About a week and a half before the meeting.

Q. I see.

It said that 144 was having a meeting?

A. Yes.

Q. Did you speak to anyone else about -- I withdraw the question.

What is your -- what is your shift at Queens-Nassau Nursing Home?

A. Eight to four.

Q. Eight to four?

A. Yes.

Q. When was the meeting supposed to be held?

A. It was supposed to be three o'clock in the afternoon.

Q. Did you attend the meeting?

A. Yes.

Q. Did you have to ask permission?

A. Yes.

Q. Whomd di you ask?

A. Well, I asked Mr. Mintz -- the housekeeper at the time, if it was okay if I attended the meeting.

He said we would have to get an okay from Miss Watkins.

She said it would be okay as long as we punched out.

Q. Are you sure it was Mr. Mintz?

A. Well, you know, whoever the housekeeper was. Housekeepers at that time were going through changes. I don't remember exactly. It was either Mr. Mintz or Mr. Klein, one of the two.

Q. Now, at this meeting held at the bar, who was present?

A. Well, I was present; the nurses were there, some of the nurses that attended; the aides were there; the porters were there; Miss Allen was there; Mr. Goodman was there; Miss Watkins was there.

Q. And who is Miss Watkins?

A. She was my supervisor.

Q. She was your supervisor?

A. She wasn't a supervisor inside the house, I had a housekeeper. But she was, like, over the housekeeper.

Q. She worked for Cycle Cleaning?

A. Yes.

Q. And she was the supervisor of your supervisor?

A. Yes.

Q. Did Mrs. Allen say anything about Mrs. Watkins at the meeting?

A. Well, she, like, introduced her. Miss Watkins didn't say anything.

Miss Allen said as far as the porters were concerned, Miss Watkins would tell us about that, you know, Cycle employees were concerned.

Q Did she introduce Miss Watkins?

A No.

Q Have you ever seen any representatives of any labor organization on the premises of Queens-Nassau Nursing Home during May and June of 1974?

A Yes.

Q Can you tell me who you saw, when you saw them and what happened?

A Well, I saw them during May and June, you know, in the building at least -- Mr. Goodman and Mr. Goodwin, you know, they were always together, at least two or three times a week in the building.

Q At least two or three times a week?

A Yes.

Q During the entire months of May and June?

A Yes.

Q Did you ever see Mrs. Allen on the premises?

A Not during -- I've seen her in the premises but not during that -- I can't recall.

Q Now, where did you see Mr. Goodman?

A Well, I saw -- one time I saw him in the first floor dining room.

Q What was he doing there?

A He was -- he stopped and talked to me and told me about the union and, you know, the benefits and stuff like that,

you know.

Q Speak up.

MR. ENGELHARD: I'm sorry, I can't hear.

Q He stopped to talk to me and he was telling me about the union. He was telling me the benefits and the differences between the different unions.

Q And this was sometime when?

A Well, this was, like, in the beginning.

But he also told me this also in May.

Q I see.

Was this near the dining room?

A Yes.

Q Did you ever see him -- I withdraw the question.

Did you ever see Mr. Goodman anywhere else?

A Yes.

Q Where?

A I saw him on the second floor, the third floor.

Q What was he doing there?

A He was talking to the employees.

Q Did you hear what he said?

A No, I didn't hear what he was saying.

Q How many times did you see him on the second floor?

A Oh, a number of times. Like I said, he was in the building at least two or three times a week.

Q During May and June?

A Yes.

Q I see.

Did you ever see him near the Physiotheraphy Room?

A Yes.

Q During May and June?

A Yes, June.

Q What was he doing there?

A Well, one time he had given me a paper that had the wages of what the different departments was supposed to make, you know, how much they were supposed to make an hour, weekly and stuff like that.

Q Was that near the Physiotheraphy Room?

A Yes.

Q And that was in May and June of 1974?

A Yes.

Q You ever see any union agents in the cafeteria, in the dining room?

A Yes.

MR. ENGELHARD: Objection.

He's leading the witness now.

We are not talking about really the crux of the charges.

JUDGE DIXON: Well, it is leading. I'll take that into consideration.

MR. ENGELHARD: Yes, sir.

MR. COFFEY: Okay.

BY MR. COFFEY:

Q. Now, you said you saw these people on the second and third floor. Where did you see them on the second and third floors talking to employees?

A. At the nurses' station, in the corridor.

Q. Besides -- do you know any employees they were talking to, any specific employees?

A. Well, most of the time they came, they wanted to talk to Miss Holcombe.

Q. Miss Holcombe?

A. Yes.

Q. And who is she?

A. She was an aide.

Q. How do you know they wanted to speak to Miss Holcombe?

A. Well, that's who they always came to see. They always was speaking to her everytime. Then they would ask me if I'd seen Miss Holcombe sometimes.

Q. On any of these occasions, were there any supervisors present while these people were present in the home?

A. Yes.

Q. Can you tell me who?

A. Well, Miss Watson was present one time on the second floor at the nurses' station.

Q. And who from 144 was there at that time?

A. Mr. Goodman.

Q. And did Mrs. Watson say anything to Mr. Goodman?

A. No.

He wasn't talking to her.

Q. I see.

Did you ever see any supervisors present on any other occasions during May and June when representatives of Local 144 were in the home?

A. Yes.

Q. Can you -- can you tell us another occasion?

A. Well, like in the employees' dining room, they were in there during the month of May or June.

Q. And you saw them in there?

A. Yes.

I was working in there.

Q. Whom did you see?

A. I saw Mr. Goodman and Mr. Goodwin.

Q. And what were they doing?

A. They were talking, you know, having coffee, whatever they were doing.

Q. They were having coffee?

A. Yes.

Q. With whom?

A. With whom?

Q. Yes.

A Well, Miss Watson was there, Miss McNab was there.

Q Anybody else?

A No, not that I recall.

Q Was this one time you saw them having coffee during May or June in the dining room or more than once?

A Well, one time I can say for sure.

Q Did you ever see any of these 144 agents speaking to McNab and Watson outside of the --

A Speaking to whom?

Q McNab and Watson.

Outside the dining room?

A No.

Q Was anyone else from the administration of the home present when 144 people were on the premises of the home?

A Well, a couple of times Mr. "K" was there when they were coming in the home.

Q This is during May and June?

A Yes.

Q Who was coming in the home?

A Mr. Goodwin and Mr. Goodman.

Q And where were they?

A Coming through the lobby.

Q Did Mr. "K" say anything to them?

A He didn't have no conversation. He might have said hello or whatever. I wasn't paying attention.

Q And Mr. "K" is Mr. Krakowski?

A Yes.

Q And he's the Administrator?

A Yes.

Q And McNab and Watson are supervisors?

A Yes.

Q Did you ever see Allen anywhere around the home anywhere?

A I seen her there.

Q When did you see her?

A Well, at one time on the second floor she had given us some cards to fill out. Right in the -- I don't know the room they call it where they put the soil thermometers and stuff like that, it was.

Q She gave you cards there?

A Yes, she gave us green cards to fill out, you know, about three cards to fill out for the union.

Q Who else was with you at that time?

A Robert was with me at the time, and I think Dennis was with me, also.

Q Robert Ortis and Dennis Perez?

A Yes, Robert Ortiz.

Q And this was during May and June?

A Yes.

Q I see.

Are there any other occasions that you recall --

A Wait.

This was not in May or June.

Q This was not in May or June?

A No.

Q Do you recall any other times in May and June that you saw Mrs. Allen or Mr. Goodman or Mr. Goodwin or anyone else from Local 144 in the home?

A I've seen Mr. Goodmand and Mr. Goodwin in the home quite a number of -- like I said, two or three times a week in the home.

Q And you've seen them on the first floor?

A I've seen them on the first floor, the second floor, the third floor.

Q And what were they doing?

A They were talking to the employees.

Q Did you hear what was said on these other occasions?

A No.

MR. KARASSIK: These questions have been asked and answered three times already.

JUDGE DIXON: That's right. You've gone over it already. You have all of this once already.

MR. COFFEY: Okay.

BY MR. COFFEY:

Q Who uses the locker rooms in the home?

A The men's locker rooms?

Q Yes.

A The porters, the orderlies, the kitchen men, you know, all of the male workers at the place.

Q When you come in in the morning, do you have to sign in on anything or punch out or punch --

A You have to sign in and punch.

Q What do you have to sign in in?

A In a sign-in book, and you punch a card.

Q And you have to punch a timecard, too?

A Yes.

Q Do all employees at the home have to punch timecards?

A Yes, everybody has.

JUDGE DIXON: Are you paid by the hour?

THE WITNESS: Yes.

BY MR. COFFEY:

Q And do all employees have to sign in in sign-in books?

A Yes.

Q Who signs in -- strike that.

What does the sign-in book that you sign in say on it?

A It says housekeeping on it.

Q And what type of employees sign in in that book?

A Well, the maintenance sign in in there and the laundry people sign in in that book.

Q And the porters, also?

A And the porters, also.

Q Are the maintenance and the laundry people paid by Cycle Cleaning?

A No.

Q Who are they paid by?

A They're paid by Queens-Nassau.

Q And the porters are paid by?

A Cycle.

Q I see.

Who takes care of the sign-in books?

A Well, whenever I did see it, it was Mr. Liebowitz who was always checking the sign-in book.

Q Was he checking the sign-in books for porters?

A Yes, everyday.

Q In doing your duties around the home, who tells you what to do?

A The housekeeper or sometimes Mr. Liebowitz would tell me what to do.

Q And sometimes Mr. Liebowitz --

A Yes.

Q -- would tell you what to do?

A Yes.

Q That was the procedure in the entire time you've worked there?

A Well, in the beginning, Mr. Liebowitz was the housekeeper when I first got the job. He's the one who hired me.

Then he went to a different position, he went to Assistant Administrator.

Q Does he still give you orders?

A He tells me now and then to do this, to do that, whatever he tells me to do.

Q What does he tell you to do?

A Well, like, one day he wanted me to -- well, like, if a truck came in, he would take me downstairs to unload a truck or stuff like that, you know, put it in the storage room.

Q Put what in the storage room?

A The boxes, whatever came off the truck.

Q Well, is that porter's work?

A Not that I -- I don't think so.

Q Well, did he ever tell you to do -- what to do insofar as your duties as a porter are concerned?

A Did he ever tell me what to do as far as my porter's job was concerned?

Q Yes.

A Yes.

Q What kind of things did he tell you to do?

A He might show me something, you know, that wasn't done or he wanted it done this way or whatever.

Q Did he tell you how to mop a floor?

A Yes.

Q Did he tell you if a floor wasn't mopped right?

A Yes, I'd say that, also.

Q Did this happen on a regular basis?

A Well, you could say it happened on a regular basis, because you know, he was always there checking everything.

Q When did it -- strike that.

How many times did Mr. Liebowitz ask you to unload trucks?

A Well, a number of times. Whenever a truck came in, I was the favorite.

Q Was it more than ten times?

A Yes, you can say that.

Q More than 20?

A You could say that, too.

Q You could say that?

A I can say it.

Q Is it the truth?

A It's the truth.

Q So on a regular basis, you unloaded trucks?

A Yes.

Q Did there come a time that you had gotten any instructions about who to -- about who gave you orders?

A Well, it came like this: You see, the housekeeper would tell me to do something, and then Mr. Liebowitz would come and take me away and tell me to do something. So it got to

the point where this guy would jump me for not doing what he told me to do, so I wanted to find out who was my boss.

So Mr. Workman was the housekeeper at the time. I had asked Miss Watkins, you know, who is my boss? So she said Mr. Workman is my boss.

Q And what happened then?

A. So that was it.

Q. Did you have any contact with Mr. Liebowitz after that?

A Yes, one day after that he --

Q How long after that?

A. Maybe the next week or so, a week or so.

Q. And what happened?

A. Well, I was cleaning beds on the first floor. He asked me to come with him to do something. I, you know, told him no. I told him, you know, that he wasn't my supervisor.

Q And what happened then?

A. Then, you know, he asked me if I wanted to go with him. I said no.

Q And did you have any further conversation with Mrs. Watkins on this point?

A. Well, they had a little thing downstairs outside the housekeeping, a little get together.

Q Who had a little get together?

A. Ms. Watkins and Mr. Workmand and Mr. Liebowitz was there, also, and, you know, she wanted to know who had said

that we weren't supposed to take orders from Mr. Liebowitz.

Q And after that little get together -- when did that little get together take place?

A I don't remember the exact point in time. But I know it took place, you know.

Q Can you give me a month?

A I can't say that, either.

Q Was it in 1974?

A Yes.

Q Was it the winter?

A Yes.

Q And thereafter, did Mr. Liebowitz continue to give you orders like before?

A Yes.

Q And did you obey them?

A Yes.

Q When you unloaded trucks, what did you do with the supplied you unloaded?

A Well, I put them on the freight elevator and I took them downstairs. Then I had to take them to the storage room.

Q And once you got them to the storage room, what did you do with them?

A I stacked them up. If, you know, Mr. Liebowitz wasn't there to open the door, I left them outside in the corridor.

Q Did you ever do anything else that wasn't porters' duties?

MR. ENGELHARD: Objection.

MR. COFFEY: He has already testified unloading trucks was not porters' duties.

MR. ENGELHARD: Objection, your Honor.

That's a conclusion.

JUDGE DIXON: Well, I suppose it would be a conclusion. You're asking for a conclusion on his part as to whether it's porters' duties or not.

MR. COFFEY: I see.

All right.

BY MR. COFFEY:

Q Did you ever help any employees in the home who were not porters, doing anything?

A Yes.

Q Who did you help?

A I helped the aides moved the beds, you know. I helped them roll the patients out of the day room.

Q Did this happen on a regular basis?

A Well, if the day room had to be cleaned, you know, we had to roll them out.

Q Did you help him any other times than when the day room had to be cleaned?

A Well, like, a couple of times if a new patient came in,

I would have to carry the luggage and stuff like that.

Q Who told you to carry the luggage?

A Either Mr. Liebowitz or whoever -- I forget whoever else told me. But it had to be, you know, a supervisor, somebody like that.

Q This happened how many times?

A This happened a number of times because patients were coming --

Q Did you ever help the maintenance people?

A Yes.

Q What did you do?

A Well, at one time I installed some valves in the dishwasher.

Q When was this?

A This was in the summer.

Q Of '74?

A Yes.

Q Who asked you to do that?

A The maintenance man, Joshua.

MR. ENGELHARD: If your Honor please, can we ascertain when in the summer of 1974?

THE WITNESS: It was in the beginning of the summer.

BY MR. COFFEY:

Q Was it prior to the election?

MR. ENGELHARD: Excuse me.

JUDGE DIXON: Wait a minute.

MR. ENGELHARD: This may be subsequent to the contentions of the allegations contained in the Complaint.

JUDGE DIXON: All right.

Pin it down.

BY MR. COFFEY:

Q When in the summer of 1974?

Was it before the election?

A Yes.

Q How much before?

A I'd say about a month or so before.

Q Besides the beds in the dining room, did you have to move any other bed at anytime?

A What do you mean any other beds?

Q In the --

A Well, just the beds that were the patients, take it from one floor to another floor.

Q You took beds of patients from one floor --

A Not with the patient in it.

Q Just the empty beds?

A Yes.

Q I see.

Is that usual -- you did that on a regular basis?

A Yes, whenever it had to be moved.

Q Did you have anything to do with medicine?

A. Did I?

Q. Yes.

A. No.

Q. Did you ever -- did you ever stock medicine anywhere?

A. Yes.

Q. Where?

A. I've stocked medicine on the fourth floor supply room.

Q. On whose orders?

A. Well, Mrs. Freston would tell Mr. Liebowitz and Mr. Liebowitz would, you know, get me to go upstairs or whatever.

Q. Would you speak a little louder?

A. Mrs. Freston would tell -- whenever an order would come, Mr. Liebowitz would come and get me on Mrs. Freston's orders.

Q. How often did that happen?

A. Whenever medical supplies came in. Maybe about ten time or so.

Q. Did you ever help out in the kitchen?

A. Well, at one time when they had -- one time when a Jewish person had to cook the food, Mr. Klein was in there. And whatever spilled on the floor, I was there just to, you know, clean it up.

(Laughter.)

Q. Did any of the registered nurses in the home ask you to

do anything?

A. Yes.

Q. What did they tell you to do?

A. They would ask me to move a bed from this floor or that floor or whatever.

Q. Did they have any -- did they give you any orders about your cleaning and mopping duties?

A. Tell me how to work?

Q. Yes.

A. No.

They would comment, you know, joking or something like that.

Q. Would they -- would they direct you to -- would any registered nurses ever tell you what to mop or what not to mop?

A. Like if there was something spilled that I didn't see, you know, they would tell me that there's something down there that's on the floor to get it up before somebody slips or something.

Q. Did this happen on a regular basis?

A. Well, it happened whenever I didn't notice it and it had to be picked up.

Q. Did it happen more than once?

A. Yes.

Q. Did it happen more than ten times?

A. It happened more than 50 times.

Q. Who is supposed to move beds in the home?

A. I don't know. It came to the point where the aide -- I heard that the aides were supposed to move the beds.

MR. KARASSIK: I move to strike the answer.

JUDGE DIXON: Strike it.

BY MR. COFFEY:

Q. Did you ever help -- did you ever help the maintenance man put sprinklers out?

A. Yes.

Q. When did that happen?

MR. KARASSIK: Your Honor, this entire line of questioning has been specific questions asked by the General Counsel about his activities, the witness' activities, where I think we can elicit the answers more properly by asking him exactly what he did rather than putting into his mouth and leading him into the direction that counsel would like to see him go.

JUDGE DIXON: Well, I agree with you except that I suppose that this sort of thing is going to lead into this sort of thing anyway. I mean, I suppose that anybody's memory as to what he does in detail like that just simply wouldn't stir. I don't see there's anything wrong with this question.

BY MR. COFFEY:

Q Did you ever help the maintenance man in any other capacity than you've told us?

A No.

Q Did you ever help him put out sprinklers?

A Yes.

You just asked me that before.

Q Oh.

Did you ever have anything to do with air-conditioners in the plant?

A Yes.

Q What did you do?

A Well, there had to be something done with them, and they had to be taken out of the rooms and loaded on this truck.

Q Who told you to do that?

A Well, the maintenance man asked me to give him a hand.

Q And how many times has that happened?

A Well, it happened when they took it out and when they brought it back in.

Q When was that?

A In the summer. May, also.

Q Before the election?

A I don't know if it was -- let me see now.

I think it was before the election because it was in May, so it had to be before the election.

Q Well, is it a fact that your first four checks were from a company not Queens-Nassau nor Cycle Cleaning?

A I have checks from Queens-Nassau Nursing Home.

MR. KARASSIK: Your Honor, I would ask that this witness be directed to return with the checks that he's referring to tomorrow so that we may cross-examine him on the subject.

JUDGE DIXON: Could you bring them in?

THE WITNESS: Yes, I can bring them in.

BY MR. KARASSIK:

Q What were the total number of checks that you received from Queens-Nassau Nursing Home?

A I think it was twice, two checks.

Q And were those all in 1973?

A In '73, yes.

Q No checks were issued to you by Queens-Nassau in '74 at all?

A No.

Q And certainly then no checks were issued to you in May and June of 1974?

A Not from Queens-Nassau.

Q By Queens-Nassau?

A No.

Q All right.

Now, Mr. Wilkinson, you say that you were present when

a representative of Local 4 was thrown out of the building?

A Yes, I was.

Q Did --

A He was asked to leave the building.

Q He was asked to leave the building?

A Yes.

Q Were you aware of the reason why he was asked to leave the building?

A No, I was -- I came into the dining room -- I was in the dining room when he came in. He started to talk, say whatever he was going to say, and Miss Wield and Miss Levin asked him to leave or someone was going to call the cops.

Q Did you hear his conversation?

A No, he didn't get a chance to say anything.

Q Do you know whether or not he was using foul language?

A Not while I was there. He didn't even get to open up his mouth.

Q Do you know whether or not he had been thrown out on a previous occasion?

A Yes.

Q And do you know whether or not he was thrown out at that time for using foul language?

A At the time I saw him?

Q No; the time before.

A I don't know why he was thrown out before.

A Yes.

Q -- is that correct?

A Yes.

Q Now, you in fact went to this meeting, did you not?

A Yes, I went to the meeting.

Q And a question was raised at that meeting, am I correct, relating to whether or not Cycle employees were automatically covered by Local 144?

A I think so.

Q And do you recall in your statement the following sentence:

"Another employee, a porter, said he heard Cycle was automatically 144. Allen said, 'Mrs. Watkins would explain it to us because Cycle was entirely different than the home."

A That's true.

Q Was that said by Mrs. Allen at the time?

A Yes, it was.

Q Now, when you report to the facility in the beginning of your shift, -- what is the beginning of your shift?

A Eight o'clock in the morning.

Q When you report at the beginning of your shift, Mr. Wilkinson, do you sign in and punch in?

A Yes.

Q And does the signing in require you to actually put your signature down on the line?

A I have to put my signature, the time I came in, and my job.

Q And what is punching in involve?

A Just punch a particular card and punch it in the clock.

Q Now, that card has your name on it?

A It has my name on it.

Q And that card is only your card?

A Just my card, yes.

Q And when you leave at the end of your shift, do you sign out?

A Sign out.

Q And do you punch out?

A And I punch out.

Q Now, in May and June of 1974, you followed this procedure each day --

A Yes.

Q -- of signing in and punching in --

A Yes, it was required.

Q -- and signing out -- let me finish my question -- and punching out; is that correct?

A Yes.

Q And who did you receive your check from during this period of time?

A May and June?

Q May and June of '74.

A. It was Cycle.

Q. And do you know what physically was done with your punch-in card and your sign-in sheet after your shift ended?

A. Well, Mr. Liebowitz was always there checking it.

Q. Checking the time punched in and the signed --

A. That's right.

Q. -- times?

A. That's right.

Q. What was physically done with your cards?

Do you know what was physically done with your cards?

A. They were just looked over.

Q. Well, do you know if they were delivered to the Bookkeeping Office or whether they were delivered to Cycle?

A. They were delivered -- they were taken to the Housekeeping Department, and Miss Watkins would come on Monday to pick them up.

Q. Mrs. Watkins being an employees of Cycle?

A. That's right.

Q. Is she a supervisory employee of Cycle?

A. Yes, she's a supervisory employee.

Q. And she would pick them up, you know this for a fact?

A. Well, her or Mr. Roth would come and pick them up.

Q. Mr. Roth is the owner of Cycle Cleaning?

A. Yes.

Q. Now, Mr. Workman, I think you referred to?

A. Yes.

Q. How do you spell that name?

A. W - O - R - K - M - A - N.

Q. Workman?

A. Yes.

Q. Who does he work for?

A. He worked for Cycle.

Q. Now, who sets your schedule of the days you work and the days you're off?

A. Mrs. Watkins or the housekeeper.

Q. What?

A. Mrs. Watkins or the housekeeper.

Q. And the housekeeper was Mintiz or Klein?

A. Mintiz or Klein.

Q. And they're both Cycle employees?

A. Yes.

Q. Who schedule your vacations?

A. Mrs. Watkins.

Q. Have you ever had occasion to work overtime?

A. Extra day?

Q. Extra shift or an extra part of a shift.

A. I've worked a double shift, yes.

Q. And who scheduled you for that?

A. Well, if a man didn't show in, the housekeeper or Miss Watkins would ask us if we had nothing else to do that

evening, would it be possible to work --

Q They would schedule you for overtime work?

A They would not schedule us, they would ask us if we could do it.

Q And that would be employees of Cycle who would ask you whether or not you wanted to work the overtime?

A Yes.

Q You weren't required to work the overtime, were you?

A No.

Q Did you receive any compensation in May and June of '74 at all from the Queens-Nassau Nursing Home in connection with insurance plans or porfit-sharing --

A You mean money?

Q -- or bonuses or -- yes, did you receive any kind of compensation at all?

A Are you talking about money?

Q Yes.

A No.

Q Did you --

A I received money one time from the nursing home.

Q For what?

A For going to the laundry.

Q Were you asked to go to the laundry --

A That's right.

Q -- by the nursing home?

Q Who asked you to do this?

A There was -- the bookkeeper and Mr. Klein.

Q Mr. Klein --

A But I was paid for it by the nursing home.

Q Now, the bookkeeper is employed by the nursing home; is that correct?

A Yes.

Q Mr. Klein is employed by Cycle?

A By Cycle.

Q Who is it that asked you to go to the laundry?

A They both asked me, you know, would I go because the clothes, there was something wrong with them or something.

Q The usual clothing was laundered in the nursing home?

A Yes.

Q And on this particular occasion something was wrong; is that correct?

A Yes.

Q And so they asked you if you would go to the laundry?

A That's right.

Q Was that part of your regular job?

A No, it was not.

Q How long did that job take you?

A How long did I stay in the laundry?

Q Yes.

A About an hour and a half or so.

Q And then you returned to the facility with the clothes?

A Yes.

Q Upon how many occasions did you do that?

A Just that once.

Q And who -- and were you paid for that time that you spent?

A I was paid from the petty cash, whatever they call it.

MR. COFFEY: Can we get the time on this?

A I had to sign a receipt for it.

Q The nursing home paid you for going to the laundry?

A That's right.

Q When did this happen?

A Maybe about the beginning of May or so.

Q Was that before the election on June 12th, 1974?

A Yes, before the election, yes.

Q I see.

Now, have you ever worked in any other facility as a porter?

A No, never.

Q This was your first job as a porter?

A Yes.

Q Who assigned you your duties from the time you came into the nursing home to the time you quit at the end of a shift?

Who told you what you had to do?

A What do you mean who told me?

Q Who told you what --

A Like, in the beginning, Mr. Liebowitz was the housekeeper when I first got hired. He would tell me what to do.

Q In May and June of 1974?

A Mr. Klein was the supervisor and Mrs. Watkins was his supervisor.

Q And they told you what your responsibilities were for the day?

A Yes, my job description.

Q Now, if I understand you correctly, upon occasion during the course of performing your regular duties, Mr. Liebowitz has called you away from those duties --

A Yes.

Q -- to perform other tasks?

A Yes.

Q Were those of a permanent nature or of a temporary nature?

A What do you mean permanent? It would take maybe two or three hours at least.

Q But when you finished those duties --

A I had to go back to my regular duties.

Q You went back to your regular assigned duties; is that correct?

A Yes.

Q The air-conditioner that you referred to, what was that -- what was wrong with the air-conditioner?

A I don't know. They had to be taken out. They weren't cooling. It had to be repaired or something.

Q Now, Mr. Wilkinson, you are in fact a qualified plumber, are you not?

A Yes.

Q And at the time that you did the air-conditioning work, how did it come about that you did it?

Who asked you to do it?

A The maintenance man.

Q Who --

A I didn't do no work on them, I just moved them, took them out of the rooms and put them on the truck.

Q And did that require disconnecting them from their installation?

A All you had to do was pull the plug out.

Q No screws?

A No screws.

Just take the front panel off and that's all.

Q Well, with respect to your plumbing work, were you asked to check some valves in the dishwashers?

A I installed some check valves in the dishwasher.

Q You installed them?

A Check valves.

Q Who asked you to do that?

A The maintenance man.

Q Who is that?

A I don't know his last name. The first name is Joshua something.

Q By whom was he employed?

A Queens-Nassau.

Q Do you know whether or not before he asked you to do that particular work, he asked permission of your supervisor?

A Yes.

Q Your answer is yes, he did ask such permission?

A Do I know if he --

Q Yes.

A Yes.

He asked Mr. Klein.

Q And Mr. Klein is an employee of Cycle; is that right?

A Yes.

Q Do you consider mopping to be part of your job as a porter?

A Yes.

Q And if there were wet spots on the kitchen floor, do you consider it to be out of your ordinary job function to mop it up?

A Yes, because we weren't allowed in the kitchen.

Q But you were asked to go to the kitchen?

A Yes.

Q By whom?

A By Mr. Klein.

Q By Mr. Klein?

A Yes.

Q And on how many occasions did you go to the kitchen?

A Just when they had holiday, or whatever it is, the Jewish holiday.

Q In other words, this was an unusual event, it was a once-a-year event; is that correct?

A Yes.

Q What was Mr. Liebowitz' title in May and June of 1974?

A He was Assistant Administrator. Yes, he was at that time Assistant Administrator.

Q And was it your understanding that as Assistant Administrator, he had overall jurisdiction of the entire facility?

A Yes, like, he was in charge of the building or whatever.

MR KARASSIK: I have nothing further at this time.

CROSS-EXAMINATION

BY MR. KAYSER:

Q Mr. Wilkinson, during the period prior to the middle

that were involved with the nursing home?

A. I don't know what you mean by "involved."

Q. You had some contact with?

A. That I had contact with?

Q. Yes.

A. Yes.

Q. Now, Cycle Cleaning personnel, the supervisory personnel of Cycle management, with whom did you have contact?

A. Mrs. Watkins, the housekeeper, whoever it was at the time.

Q. Mr. Klein?

A. Well, Mr. Klein, yes, he's the housekeeper.

Q. Mr. Klein and Mrs. Watkins?

A. Yes.

Q. Anyone else?

A. Well, I saw Mr. Roth, you know, just to say hello to him or something like that.

Q. Now, of the Cycle management or supervisory personnel, did you have any conversations with them with respect to any of the four unions at any time?

A. Well, one time Mrs. Watkins had told me that automatically we belonged to 144.

Q. She told you that?

A. Yes.

Q Where was that conversation?

A In the housekeeping office.

MR. COFFEY: Could we get a time on that, your Honor?

JUDGE DIXON: Yes.

BY MR. KAYSER:

Q When was that?

A This was about before the summer, before April, February or something like that.

Q Early 1974?

A Yes.

Q How did the subject come up?

A Well, we were talking, discussing about when we were going to get a union and all this other stuff, you know, like that. She explained automatically that we would belong to Cycle, you know, we never --

Q I'm sorry, I didn't hear you completely.

A Automatically she said we belonged to Cycle. We were inquiring about a union.

Q She said you were employees of Cycle?

A Automatically we belonged to 144.

Q She told you that?

A Yes.

Q Today, do you know whether or not that's factually accurate?

A Do I know it?

Q Yes.

A Today?

Q Yes.

A There's no union there still?

A Well, to your knowledge, was that statement ever factually accurate?

A No.

MR. COFFEY: Objection, your Honor.

It calls for a conclusion.

JUDGE DIXON: The answer is in. I'll let it stand.

BY MR. KAYSER:

Q At any time did any supervisory personnel or management of Cycle Cleaning try to dissuade you from joining a union?

A Try to do what?

Q Dissuade you from joining any union?

A No.

MR. COFFEY: Objection, your Honor.

This is outside the scope of direct.

MR. KAYSER: If this is outside the scope of direct, your Honor, I'll withdraw the question, because there has been no testimony bearing upon this man being persuaded one way or the other with respect to unions.

I have no further questions.

JUDGE DIXON: Do you still want a ruling?

MR. COFFEY: If he says he has no further questions,

REDIRECT-EXAMINATION

BY MR. COFFEY:

Q Was Watkins there everyday after she --

A Then a housekeeper came in.

Q Then the housekeeper came in?

A Yes, then somebody was hired to become the housekeeper.

Q When was someone hired to become a housekeeper?

A I don't -- I don't remember how long it was after she was there.

Q About how long?

A Oh, maybe about two or three months or so, two or three months, something like that.

Q And then did Mrs. Watkins come everyday after that?

A No.

She came, you know, now and then, you know, like, to pickup the checks or to, you know, give us meetings or stuff like that.

MR. COFFEY: May I have your indulgence?

JUDGE DIXON: Yes.

BY MR. COFFEY:

Q Now, about this 1199 meeting, whenever it took place, were you or were you not given permission to go?

A Mr. Klein had told me that it would not be too healthy for me to go. And he said if I want to go, to go. That's

his exact words.

Q He said if you wanted to go, to go, but it wouldn't be too healthy for you?

A Yes.

MR. KARASSIK: Your Honor, we don't need the testimony repeated for emphasis. I think the witness said it clearly and loudly.

BY MR. COFFEY:

Q Did you take that --

MR. KARASSIK: We don't need the repetition for emphasis.

JUDGE DIXON: Yes.

BY MR. COFFEY:

Q So, did you take that as permission to go or as a rejection of your request?

MR. ENGELHARD: Objection,

A Well --

MR. ENGELHARD: Objection.

Please, Mr. Wilkinson.

Mr. Trial Examiner --

MR. COFFEY: I'll withdraw the question.

JUDGE DIXON: All right, the question has been withdrawn.

No further questions, your Honor.

RECROSS-EXAMINATION

JUDGE DIXON: All right.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: General Counsel calls Fay Winkler to the stand.

Whereupon, FAY WINKLER, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Fay Winkler.

Q Where do you reside?

A 284 Beach 15th Street, Far Rockaway, New York 11611.

JUDGE DIXON: Now, speak up loudly when you testify, will you please?

THE WITNESS: Okay.

BY MR. COFFEY:

Q You're employed by Queens-Nassau Nursing Home?

A That's correct.

Q In what capacity?

A Receptionist.

Q Have you ever seen any representatives of any union on the premises?

A. Yes, I have.

Q. Whom did you see?

A. By name, I would say --

Q. Excuse me.

During May and June of 1974, I mean.

A. All right.

Miss Allen, and the others I don't know by name.

Q. Do you see them anywhere in here?

A. I don't remember, no.

Q. How do you know they were representatives of Local 144?

A. I don't know what number they were from.

Q. But you saw Mrs. Allen?

MR. KARASSIK: I'm sorry, I didn't hear the answer.

THE WITNESS: I don't know what number union they were from.

MR. KARASSIK: Thank you.

BY MR. COFFEY:

Q. But you saw Mrs. Allen?

A. Yes.

Q. In May and June of 1974?

A. Yes.

Q. How many times did you see her during May and June of 1974 on the premises of Queens-Nassau Nursing Home?

A. I can't give you an accurate number. I could just give you --

Q Approximately.

A -- a guess.

Q Approximately?

A Oh, I don't know. Six times.

Q Could it have been more than six times?

A And it could have been less. I don't know.

Q Was Mrs. Allen alone when you saw her?

A Sometimes.

Q Was she with other people when you saw her?

A Other times.

Q Where did you see her when she was on the premises of Queens-Nassau Nursing Home?

A I saw her in the lobby.

Q I see.

Where did she go when she came in to the nursing home or when you saw her?

A I wouldn't actually know. She could go anyplace once she passed me. I can't see beyond my desk where somebody goes.

Q Did you stop her?

A Did I stop her?

Q Yes.

A No.

Q Anybody ever give you any instructions to stop Mrs. Allen from coming in the nursing home?

A. No, they didn't.

Q. When Mrs. Allen entered the nursing home during May and June of 1974, was there ever any supervisors present when she entered?

A. Supervisors?

Q. Yes.

A. Meaning whom?

Q. Mr. Krakowski, any of the nurses or --

A. Present on the same place?

Q. Right.

A. Standing next to her, is that what you're saying?

Q. In the area.

A. In the area?

Q. Yes.

A. Yes.

Q. Whom did you see that saw Mrs. Allen as she came in the nursing home?

A. Who did I see who saw her?

Q. Yes.

A. At the same time that I saw her?

Q. Right.

A. Different people on different occasions.

Q. Can you tell us who in particular?

Did Mr. Krakowski ever see her coming into the nursing home?

A Yes, if he was standing in the lobby at the time when she came in, he would see her.

Q Were there any occasions where you saw him see Mrs. Allen as she came into the nursing home?

A I'd say yes.

Q How many times?

A I wouldn't know.

Q Was this during May and June of 1974?

A Yes.

Q How about Mr. Liebowitz; was Mr. Liebowitz ever there in the lobby when Mrs. Allen came in?

A He could have been. I don't know.

Q You don't recall?

A No.

Q How about any of the registered nurses; were any of the registered nurses present?

A Yes, I would say so.

Q When Mrs. Allen came in in May and June?

A Yes, I would say so.

Q Can you give me the names of any registered nurses that were present when Mrs. Allen came in?

A I wouldn't remember.

Q Could Mrs. Allen have been in the nursing home during May and June of 1974 ten times that you saw her?

A That I saw her?

Q Yes.

A Could it have been ten times?

Q Yes.

JUDGE DIXON: Please don't repeat the question.

A I don't want to say because I don't know.

MR. COFFEY: Mark this as General Counsel's Exhibit #11 for identification, please.

(The above-mentioned was received and marked as General Counsel's Exhibit #11 for identification.)

BY MR. COFFEY:

Q I draw your attention to General Counsel's Exhibit #11 for identification.

Is this the statement that you gave to Miss Chait, Field Examiner, for the Board?

(Handing.)

A Yes.

Q I direct your attention to these lines at the bottom of Page one. Would you read them.

A I've read them.

Q Does that refresh your recollection about how many times you saw Mrs. Allen in the home during May and June of 1974 prior to --

A That was also an approximation. That was just a guess.

Q Well, how many --

MR. ENGELHARD: I'm sorry, I couldn't hear you.

JUDGE DIXON: All right, on the record.

MR. COFFEY: General Counsel calls Thomas McKethen to the stand.

Whereupon, THOMAS McKETHEN, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Thomas McKethen.

Q Where do you reside, Mr. McKethen?

A 309 Beach 47th Street, Edgemere, New York.

Q When were you hired, Mr. McKethen?

A Well, I was hired January the 24th, 1974.

Q And who hired you?

A Miss Watkins.

Q And where did you work?

A Queens-Nassau Nursing Home.

Q Doing what?

A Porter.

Q Did you attend a meeting at a bar near Queens-Nassau Nursing HOme at anytime?

A I did.

Q When was that?

A It was on late April, early May, somewheres along there.

Q How did you find out about the meeting?

A Well, I heard one of the employees mention it, and then I seen it on the bulletin board.

Q And you also saw it on the bulletin board?

A Yes.

Q Where is the bulletin board?

A Well, I seen it in the basement. It was on the bulletin board by the housekeeping office.

Q By the housekeeping office?

A Yes.

Q And how long before the meeting was it that you saw -- what was it on the bulletin board?

On a piece of paper?

A Yes, on a piece of paper.

Q And what did the piece of paper say?

A Well, I can't recall exactly what the piece of paper said, but I know the meeting was to be held that evening at three o'clock at bar behind the nursing home.

Q I see.

Who held that meeting?

A Local 144.

Q What was your shift at that time?

A Well, at the time of the meeting, my shift was eight to four.

Q And when was the meeting supposed to take place?

A Three in the afternoon.

Q I see.

Did you have to ask permission to go to the meeting?

A Well, I didn't ask permission, no.

Q Did you speak to anybody about going to the meeting?

A Well, my supervisor, Mr. Klein, asked me whether or not I was going to the meeting.

Q Was that on the same day as the meeting --

A Yes.

Q -- that he asked you that?

A Yes.

Q I see.

What did you say?

A Well, I said that I may and I may not go.

Q You decided to go?

A Yes.

Q Who was at this meeting?

A Well, Miss Allen and Miss Watkins and now I know it was Mr. Goodman. But when I first made the statement, I didn't know his name until today.

Q Whose meeting was this?

A It was Local 144.

Q Did Mrs. Allen introduce anybody at this meeting?

A Well, she introduced the guy that was with her and Miss Watkins.

Q And Miss Watkins?

A Yes.

Q In the period between the first of May and the election on June 12th of 1974, did you see any representatives from any union on the premises of Queens-Nassau Nursing Home?

A I did.

Q When did you see them and who did you see?

A Well, the first one I seen -- I don't know his name; he was a stout guy. He was standing in front of the telephone booth in the lobby.

Q A stout man?

A Yes.

Q And how did you know what union he was with?

A Well, when I passed him, he said, "Don't forget what union to vote for, Local 144."

MR. ENGELHARD: I'm sorry, I can't hear the witness.

THE WITNESS: He said, "Don't forget what union to vote for, Local 144."

BY MR. COFFEY:

Q Had you seen him before this time at any time?

A Yes, I had.

Q Where?

A I had seen him one morning when I was coming to work in front of the building.

Q What was he doing?

A. Well, he was passing out some papers there that had the union on it.

Q. Local 144?

A. Yes.

Q. I see.

Now, Mr. McKethen, when he told you this inside the home, about how long before the election was it that he confronted you and told you to vote for 144?

A. Well, I couldn't give you no definite time for that.

Q. Was it -- was it in the latter part of May or the early part of May or in June or when?

A. Well, I don't know exactly. All I know is it was between May and June. That's all I know.

Q. How long before the election was it?

A. I couldn't tell you. I'm not too clear on that date.

Q. Who was present when this man spoke to you, anybody?

A. Yes.

Q. Who?

A. Mr. Yard, the supervisor.

Q. Mr. Yard?

A. And Miss McNab and Miss Wield.

Q. Did they say anything to this man --

A. No.

Q. -- that you were talking to?

A. No, not that I can recall.

Q Did you ever see him again?

A Yes, I did.

Q Where did you see him?

A Well, I saw him on the second floor.

Q How long after you saw him on the first floor?

A Well, it was in the same day.

Q I see.

What was he doing on the second floor?

A Well, when I passed him, he was just standing by the nurses' station.

Q Was he speaking to anybody?

A Yes, he was.

Q Did you hear what he said?

A No, I didn't.

Q Did he speak to you?

A No.

MR. KARASSIK: Your Honor, this testimony and the last several witnesses has merely been cumulative testimony as to the same facts. Perhaps it would expedite the hearing if the further cumulative evidence were reserved to later, if necessary, and we get on to a prima facie case. I just can't see calling one witness after another to keep testifying to the same set of circumstances.

JUDGE DIXON: Well, I think there is something to what you say.

MR. COFFEY: And that they were there on 6-10 and 6-11?

MR. KAYSER: I'll tell you what, how about offers as to everyone but Mr. Morales?

MR. COFFEY: All right.

JUDGE DIXON: Well, let's go off the record for a moment now before we get this filled up here.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: General Counsel submits as an offer of proof that if the following witnesses were allowed to testify, they would testify that on or about June 4th, June 10th, June 11th and on other -- and on various other dates during May and June of 1974, joint Respondents, by Rita Freston, Ardis Watson, Mary McNab, Miss Wield and Mr. Krakowski and other supervisors presently unknown, permitted representatives of Local 144 to conduct union business in Respondent's home, the Queens-Nassau Nursing Home during working hours, and they did this on -- take that out, that they did this on. That's it.

JUDGE DIXON: You haven't named the witnesses that were going to be called?

MR. COFFEY: Oh, yes.

Mr. Morales, the representative of 1115, Mr. Robert Ortiz, the 8(3) in this matter, Mr. Perez --

MR. ENGELHARD: Mr. Perez?

MR. COFFEY: Dennis Perez, Robert Ortiz, Juan Cintron, Gloria Winkler and Josephine Nelson.

Nelson, Perez, Ortiz and Gloria Winkler were employees.

MR. KARASSIK: Of whom?

MR. COFFEY: Of the nursing home, at the time.

MR. ENGELHARD: What were their jobs?

MR. COFFEY: What's is that?

MR. ENGELHARD: What were their jobs?

MR. COFFEY: Perez was a porter.

Nelson, I don't know what her position was.

Gloria Winkler was a receptionist at the time.

Ortiz was a porter.

MR. KAYSER: Can you be more specific as to who employed whom?

MR. COFFEY: We say Joint Respondents.

MR. KAYSER: Some were employed by Cycle Cleaning and some by the nursing home.

MR. COFFEY: We'll say that Perez and Ortiz were paid by Cycle Cleaning, although employed by both.

MR. KAYSER: Okay.

MR. KARASSIK: No.

Your Honor, General Counsel, I think, is trying to put into this offer of proof, legal conclusions as to the Joint Employer relationship.

Isn't just the question of the offer of the proof here just to state that they saw people from Local 144 on the premises and they may have at various dates come into the nursing home.

JUDGE DIXON: Well, it is immaterial except for the fact that General Counsel, I suppose, wants to show that they were at least people who were entitled to be there and were also in a position to testify as employees of one or the other, would be in a position to testify.

MR. KARASSIK: That is fine.

MR. ENGELHARD: This doesn't prevent the General Counsel from putting all of these witnesses on for other purposes.

JUDGE DIXON: Oh, no, no, of course not.

Is that agreeable to everybody?

MR. KARASSIK: I would like the stipulation read back, the offer read back.

JUDGE DIXON: Yes.

(Record read.)

MR. KARASSIK: I would accept that offer of proof, your Honor, with the reservation we've already made with respect to Joint Employers.

JUDGE DIXON: Yes, all right.

Is that agreeable?

MR. KAYSER: Agreeable, your Honor.

A Well, there's the kitchen workers, the maintenance and the orderlies along with the porters.

Q When you come in in the morning, what do you do, Mr. McKethen?

A What do you mean?

Q As far as signing in anywhere or punching in anywhere?

A Oh.

We punch in with the time clock and then we sign a book.

Q You sign in a book?

A Yes.

Q Who signs in in the sign-in book?

A Well, there are the porters and the maintenance men and the laundry workers.

Q I see.

Are the maintenance men and the laundry workers paid by Cycle?

A Not as far as I know.

MR. ENGELHARD: I couldn't hear the answer.

THE WITNESS: Not as far as I know, sir.

MR. ENGELHARD: Thank you.

BY MR. COFFEY:

Q Do all of the other employees in the home sign in the sign-in book?

A They do.

Q How do you know which book to sign?

A Well, on the front of the book they have which position is held, like housekeeping, LPN's, RN's or whatever.

Q And who keeps track of the sign-in book?

A Well, I couldn't tell you exactly who, but I think Mr. Liebowitz does.

Q What gives you that opinion?

A Well, sometimes I see him over by the, you know, desk where they keep the books. He'd been looking through the books.

Q Do all employees have to punch timecards?

A Yes.

Q What are your duties as a porter, Mr. Mckethen?

A Well, supposed to be cleaning the patients' rooms and the bathrooms and the shower rooms, you know, and keep the floors and stuff clean.

Q Do you help out -- do you do anything that porters don't usually do? I mean, isn't what you usually do -- excuse me. I withdraw that question.

Do you help out people who are not porters in the home?

A Yes, I do.

Q What do you do?

A Well, I help the aides take patients out of bed and put them in bed.

Q Do you do that often?

A. Quite often.

Q. Do you do it more than once a week?

A. Yes.

Q. Do you do it everyday?

A. Practically everyday.

Q. You ever help out the maintenance men in the home?

A. Yes.

Q. What do you with them?

A. Well, one day I was told to go outside and help one of the maintenance men bring in the air-conditioners.

Q. Who told you to do that?

A. Well, the maintenance man asked me, so I told him I had to ask the housekeeper, Mr. Klein. So he said for me to go ahead and help him.

Q. How many times did that happen?

A. Only once.

Q. And when was that?

A. I can't remember when it was. It was during the summer, is all I can say.

Q. Did you ever do anything else to help the maintenance men?

A. Yes.

Q. What else?

A. Well, I have helped him clean the filters in the air-conditioner, you know, take them out and I washed them out

in the janitors' closet.

Q. Who told you to do that?

A. The maintenance man.

Q. Do you know his name?

A. All I know him by is Sheer. I call him Sheer.

Q. How many times did that happen?

A. Well, I did it once on the second floor and once on the third floor.

Q. On different days?

A. Yes.

Q. When did that occur?

A. What?

Q. When was that?

A. Which day?

Q. Yes.

A. It was the day after the first time I did it.

Q. I mean, when did these incidents happen, in what month? Do you know?

A. No.

All I can say was in the summer, is all I know.

Q. Was it before the election of June 12th?

A. No; it was after.

Q. Did you ever put in any -- did you ever do anything that maintenance men do?

A. Well, other than that, I put in a couple of light bulbs.

Q How many times did you put in light bulbs?

A On several occasions.

Q More than twice?

A Yes.

Q More than three times?

A About three or four times I put in the light bulbs.

Q Did you ever do anything else with the maintenance people?

MR. KARASSIK: Can we have a time on the light bulbs?

THE WITNESS: What do you mean time?

MR. KARASSIK: Was it before the election of June 12th?

THE WITNESS: Well, it was before and after.

MR. KARASSIK: Before and after?

THE WITNESS: Right.

MR. KARASSIK: Thank you.

BY MR. COFFEY:

Q Did you ever do anything in the bathrooms for maintenance men?

A Yes.

Q What did you do?

A Well, I've had them unstop the bathrooms, the commodes.

Q How many times did that happen?

A I'd say about five times.

Q Who told you to do that?

A Well, the maintenance man.

Q Mr. Sheer?

A Yes.

Q When did these -- did this happen, you said, about five times that it happened?

A Right.

Q Was that in the entire -- from between January and June?

A No, no.

It was -- the first time I did it was in early April.

Q And when was the last time you did it?

A It was in July.

Q I see.

Did any of the supervisors in the home ever tell you to do anything?

A Yes.

Q Who and what?

A Well, Miss Watson would try to tell me how to do my work.

Q What would she tell you?

A Well, on one occasion she told me that I wasn't mopping the floor correct.

Q When was this?

A I think it was in March, I believe.

Q Did this ever happen at any other time that she told you that you weren't mopping the floor correctly?

A. Twice she told me.

Q. Both in March?

A. No.

Q. When was the other time?

A. I don't know exactly when, but it was after March.

Q. Did anybody else ever tell you to do anything who was a supervisor on the nursing home staff?

A. No, not as far as I can recall.

Q. Did Mr. Liebowitz ever tell you to do anything?

A. Yes.

Q. What did he tell you to do?

A. Well, he had me bring in some supplies from the freight elevator.

Q. How many times did he tell you to do that?

A. Only once.

Q. When did that happen?

A. I can't say exactly when.

Q. Was it before the election?

A. It was after the electi n.

Q. After the election?

A. Right.

Q. When did you stop working at the home?

A. It was the week of the 23rd of September.

Q. Was it only once that Mr. Liebowitz told you to bring in kitchen supplies or was it more than once?

A Well, it was once for kitchen supplies and then he asked me to bring some supplies in for the housekeeping staff like cleaning equipment.

Q How many times did he ask you to do that?

A Only once.

Q When was that?

A Oh, shortly before -- I can't say -- it was shortly before he asked me to bring the kitchen supplies.

MR. ENGELHARD: Can we find out whether or not that also is before or after the election?

MR. COFFEY: Okay.

BY MR. COFFEY:

Q Was that before or after the election?

A It was after.

MR. ENGELHARD: Pardon me?

THE WITNESS: It was after.

MR. COFFEY: To General Counsel, your Honor, it doesn't matter whether this was before or after the election.

JUDGE DIXON: Proceed.

BY MR. COFFEY:

Q Did you ever help the aides in any way in the home?

A Yes.

Q What did you do for them?

A Well, Like I said before, I helped them take patients out of bed, put them in beds.

Q. Did you have anything to do with patients other than that?

A. No, other than taking them out of the day room, too. We had to clean the day room.

Q. You took them out of the day room when you had to clean the day room?

A. Right.

Q. How often did you have to clean the day room?

A. Twice a day, as a matter of fact.

Q. Every time you had to clean it up, you took the patients out of the day room?

A. No; only in the evening time. In the morning time we cleaned around the patients.

Q. I see.

Did you ever restrain a patient from leaving the home?

A. Have I ever restrained one from leaving the home?

Q. Ever stop one from leaving the room?

A. Oh, yes.

Q. How many times has that happened?

A. Three times.

Q. When did it happen?

A. Do you want to know on what day it happened?

Q. Can you give us a time period when these events happened?

A. No, I couldn't, I couldn't give you the time period

when it happened.

Q But while you were employed there, on three occasions you stopped a patient or patients from leaving the home?

A Right.

Q Who told you to do that?

A Well, no one told me because there was nobody around when it happened.

Q Did any of the aides help you to do anything on your duty?

A Yes, yes.

Q What did they help you to do?

A Well, they would help me to wipe the chairs that the patient sits in if they found one messed up.

Q Did they ever help you in the dining room in any way?

A Well, they would wipe off the table, the table that the patient eats on.

Q The aides would do this?

A Yes.

Q And you would do it, also?

A Yes.

Q Did anybody from the nursing home staff ever ask you to mop rooms that you hadn't moved?

A Yes.

Q Who?

A Mr. Liebowitz asked me to go to a room and mop it.

Q. And how many times did he ask you to do that?

A. Well, he asked me on several occasions. I can't pinpoint the exact number of times it was, but it was on several occasions.

Q. Was it more than five?

A. No.

Q. Was it more than three?

A. I couldn't tell you. I don't know exactly. I know it wasn't more than five.

Q. Did anyone else from the nursing home's staff, to your recollection, tell you to do anything?

A. Yes.

Q. Who?

A. Miss Preston.

Q. What did she tell you to do?

A. Well, she told me one day to clean out the oxygen room.

Q. Do you wear a name tag on the job?

A. I did.

Q. What did the name tag say?

A. Queens-Nassau Nursing Home.

Q. Do you have that name tag with you?

A. Yes.

Q. Can I see it, please?

A. Yes.

(Handing.)

MR. COFFEY: We offer this as General Counsel's Exhibit #12.

JUDGE DIXON: Why don't you get a stipulation?

MR. COFFEY: I'll try.

Can we get a stipulation that the porters wear a name tag which says Queens-Nassau Nursing Home?

MR. KAYSER: You have a stipulation from Cycle Cleaners. In fact, you have an administration in our answers on the legal questions.

MR. COFFEY: Mr. Engelhard?

MR. ENGELHARD: The stipulation is to --

MR. COFFEY: That the porters at the Queens-Nassau wear a name tag which says Queens-Nassau Nursing Home on it?

MR. ENGELHARD: Do they all do it?

MR. KAYSER: I don't know.

Your Honor, just as to the various parties' positions on the legal issue of Joint Employer, in the pleadings filed in this case by Cycle Cleaning, we have not contested the position taken by the General Counsel on this issue.

JUDGE DIXON: Well, then you don't need to join in the stipulation, do you?

MR. KAYSER: Then we don't need to join in, that's right.

JUDGE DIXON: If we can get one.

What's your position?

MR. KARASSIK: To stipulate that Mr. McKethen wore this name tag?

JUDGE DIXON: Yes.

MR. KARASSIK: Certainly.

MR. COFFEY: And that the porters wear them?

MR. KARASSIK: Yes, I'll so stipulate.

JUDGE DIXON: Mr. Engelhard?

MR. ENGELHARD: So will we, your Honor.

MR. COFFEY: Okay.

JUDGE DIXON: The stipulation is accepted.

MR. COFFEY: No further questions, your Honor.

MR. ENGELHARD: May we see any statements that this witness has given?

MR. COFFEY: Sure.

(Handing.)

CROSS-EXAMINATION

BY MR. KARASSIK:

Q You were first employed by the -- to work in the Queens-Nassau Nursing Home in January of 1974?

A That's right.

Q And did you work there continuously until September 23rd of 1974?

A I did.

Q And during that time did you have any vacations?

A No, I didn't.

Q And you have stated for the General Counsel all of the various occasions on which you've been asked to do work by supervisors of the Queens-Nassau Nursing Home?

A Yes.

Q Those are the only occasions that come to mind?

A Yes, that's all I can think of.

Q Have you ever worked as a porter in any other nursing home?

A No, not in a nursing home, no.

Q Have you ever worked as a porter in a hospital in New York City?

A No.

Q Is this your first job as a porter?

A No.

Q Where else have you worked as a porter?

A I worked as a porter at Linden Plaza here in Brooklyn.

Q What is Linden Plaza?

A It's an apartment house.

Q An apartment house?

A Right.

Q So you have had no other employment that involved working side by side with nurses' aides, licensed practical nurses and registered nurses?

A No.

Q So you have no experience which would indicate to you whether it is usual or not for porters to help nurses' aides in nursing homes; is that correct?

A I don't understand the question.

Q You have no experience which would indicate whether it's customary and usual in New York City for porters working side by side -- for porters to help nurses' aides with whom they work side by side in the nursing home?

A Well, if I have heard of anybody else doing like that, is that what you're asking me?

Q Well, have you had any personal experience -- you have had no personal experience in any other health institution other than Queens-Nassau Nursing Home.

A No, I haven't.

Q And you have never then worked side by side with nurses' aides?

A No, no other place but Queens-Nassau.

Q And you have never then worked side by side with licensed practical nurses?

A No, not in no other nursing home.

Q And then just to complete the series of questions, you have also never worked side by side with registered nurses?

A No.

Q Did you ever receive from either the Queens-Nassau

Nursing Home or Cycle Cleaning, a document entitled "Personnel policies"?

Do you recall ever receiving such a document?

A. No, I don't recall that.

Q. Did you ever receive a job description?

A. Of what I'm supposed to do?

Q. Yes.

A. Yes.

Q. Who gave you that?

A. Well, the first one that was given to me, it was given to me by Miss Watkins.

Q. Any others that were given to you?

A. Yes.

When Mr. Paul became supervisor.

Q. Mr. Paul?

Q. Mr. Paul gave you a job description, also?

A. Right.

Q. Mr. Paul worked for whom?

A. He worked for Cycle Cleaning Company.

Q. Miss Watkins worked for whom?

A. Cycle Cleaning Company.

Q. Who set your schedules?

A. The schedule for --

Q. Who determined what days of the week you should work?

A. Well, between Miss Watkins and the supervisor, the

housekeeping supervisor, you know.

Q Which was Mintz or Klein?

A Well, when Mr. Mintz was there, yes, Mr. Klein did and Mr. Paul.

Q In any event, it was determined by employees of Cycle Cleaning Company?

A It was determined -- what do you mean?

Q Your schedules, the days you worked, they were set up by employees of Cycle Cleaning Company; is that right?

A Right.

Q And if you were to work -- have you ever worked extra hours in a day or extra days in a week?

A Yes.

Q And who authorized you to work the extra hours or the extra days?

A Miss Watkins.

Q Have you had any holidays granted to you?

A What do you mean, about being off?

Q Yes, being off on a holiday.

A No, I've never been off on a holiday unless --

Q Have you worked on holidays?

A Yes.

Q Have you received premium pay for working on a holiday?

A Yes.

Q And who was it that paid you that premium pay?

A. It was Cycle Cleaning.

Q And who was it that scheduled you to work on those holidays?

A. Well, no one actually scheduled it, it just happened that my days fell on the days that the holiday was on so I had to work. That's the way it went.

Q But the schedules, in the first case, were set up by Cycle?

A. Right.

Q And you say you have never had a vacation?

A. No.

Q When you left the employ of Cycle Cleaning in September of 1974, Mr. McKethen, did you receive any monies upon leaving to compensate you for vacation, sick days or anything of that sort?

A. Just for vacation.

Q And who did that check come from?

A. Cycle Cleaning.

Q What clothes do you wear when you first come on to the premises at the beginning of your shift?

A. Well, sometimes I wear my street clothes and then again I come in with a uniform on.

Q And when you wear your street clothes -- strike that.

Do you have a regular uniform that you wear during the course of the day?

A. Yes, we have some.

Q. What does it consist of?

A. Just pants and shirts.

Q. Dungaree-type pants?

A. No.

Just regular -- I'd say regular material pants, that's all.

Q. So when you come in in your everyday clothes, you must have a place within the nursing home to change into this uniform; is that correct?

A. That's correct.

Q. And is this the purpose for which you use the locker room?

A. Right.

Q. Is this the purpose for which other employees use the locker room?

A. The male employees, yes.

Q. And do the female employees have their own locker room?

A. They do.

Q. Now, when you were asked to help out the maintenance man to bring in the air-conditioners, did one of your supervisors authorize you to do that work?

A. The maintenance man said he had asked him and he said yes.

Q. The maintenance man was employed by whom?

A. By the nursing home.

Q. Queens-Nassau Nursing Home?

A. Right.

Q. And that employee -- and his name was what?

A. I call him Sheer.

Q. Like Sonny and Cher?

A. I couldn't tell you that. All I know is that I called him Sheer.

Q. So Sheer went to your supervisor, Mr. Klein, to ask him if you could help out with the air-conditioners; is that correct?

A. That's correct.

Q. Did you read the job descriptions that were given to you by Mrs. Watkins and Mr. Paul?

A. Yes.

Q. Do you have a copy of those job descriptions?

A. No, I don't.

Q. Do you recall whether or not those job descriptions indicated that you would assist the aides in getting --

A. No.

Q. -- patients in and out of beds?

A. No.

Q. They didn't say it or you don't remember?

A. They didn't say it.

Q. Did you ever receive any warning notices for the type

of work you were doing?

A. Receive any warning notices?

Q. Yes.

A. For my porter's work or helping the -- for my porter's work or helping the aides?

Q. No, no.

For your porter's work?

A. No.

Q. Did you ever receive any verbal warnings about your work?

A. Not about my work, no.

Q. Did you receive warnings about something, lateness, absences, anything?

A. No, none of those things, no.

Q. Were you ever disciplined in any way on the job?

A. What do you mean?

Q. Either suspended from work for a period of time --

A. No.

Q. -- or docked pay for some infraction of the rules or something of this sort?

A. No.

Q. Who did you regard as your -- who did you regard as the supervisor to whom you were responsible at the Queens-Nassua Nursing Home?

A. To whom I was responsible?

Q Yes.

A To whom I was working under?

Q Yes.

Who was your supervisor?

A Well, at first Mr. Mintz, then Mr. Klein, then Mr. Paul.

Q And these are all employees of Cycle Cleaning?

A Right.

Q Did you ever receive any compensation of any sort from the Queens-Nassau Nursing Home?

A No.

Q Do you have any personal knowledge of what happens to your punch-in cards after the end of your shift?

A No, I don't.

Q Or at the end of the payroll period?

A No, I don't.

Q You have no knowledge?

A No.

Q Did you work five days a week, Mr. McKethen?

A Yes.

Q Now, when you -- strike that.

You testified that you took patients out of the day room at mealtime.

Is that a fair statement?

A No, I didn't say at mealtime.

Q Well, tell us when you took them out.

A I said we took them out when we had to clean the day room in the evening.

Q In the evening?

A Right.

Q And was that in preparation for cleaning the day room?

A What do you mean in preparation?

A You took them out so you could have access to that room and clean the floors --

A Yes.

Q -- and whatever had to be cleaned, is that right?

A Right.

Q And mopping was part of your job, was it not?

A Yes.

Q I'm not quite clear about this aides wiping off tables.

What did you have to do with the aides wiping off tables?

A What did I have to do with it?

Q Yes.

You testified something to that effect.

A I just stated that they help me do it sometimes. as far as saying that if I had anything to do with them doing it, no. They just did it because they wanted to do it.

Q They voluntarily lent you a hand while you were doing

your work?

A. Yes.

Q. Were patients around at the time generally?

A. Sometimes, yes; sometimes, no.

Q. Did you get along pretty well with the aides at the home?

A. Yes.

Q. Did all of the employees at the Queens-Nassau Nursing Home wear tags?

A. Well, I can't say all of them wear them, but the ones that I have seen around there, they had one.

Q. Do you know the reason why you wore tags?

A. Well, I guess it's just part of the uniform, as far as I know.

Q. Do you know whether or not it was to identify you from persons not working in the nursing home?

A. That, I don't know.

Q. You don't know?

A. No.

MR. KARASSIK: I have nothing further.

MR. COFFEY: No further questions, your Honor.

JUDGE DIXON: Wait a minute.

We have a couple of others down there.

MR. COFFEY: I'm sorry.

CROSS-EXAMINATION

P R O C E E D I N G S

JUDGE DIXON: On the record.

Go ahead.

MR. COFFEY: General counsel calls as its first witness for today, your Honor, William Morales.

Whereupon,

WILLIAM MORALES,

was called as a witness for the General Counsel, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A William Morales.

Q What's your home address?

A 1399 Madison Street, Brooklyn, New York

MR. COFFEY: May we go off the record for a second, your Honor?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: In an off-the-record discussion, your Honor, the parties have agreed to stipulate that both

Local 1115 and 144 are labor organizations.

Is that so stipulated?

MR. KARASSIK: Yes, within the meaning of the act.

JUDGE DIXON: Yes.

And didn't I understand also that they were stipulating to the jurisdictional facts?

MR. KARASSIK: Yes, we will stipulate to the jurisdiction of the Board.

MR. ENGELHARD: We have already admitted it in our pleadings.

JUDGE DIXON: All right; fine.

MR. COFFEY: Could we go off the record a second again, please, your Honor?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

Please proceed, Mr. Coffey.

MR. COFFEY: Yes your Honor.

BY MR. COFFEY:

Q Who is your employer, Mr. Morales?

A Local 1115.

Q And how long have you been employed by them?

A About six and a half years.

Q And in what capacity?

A Business representative.

Q And when did you start organizing Queens Nassau Nursing Home?

A It was in the latter part of September of 1973 and October of 1973.

Q What did you do?

A I was outside the premises giving out cards, speaking to employees and had gotten some of them to sign and some of them were sent through the mail.

Q Can you tell us some of the people you gave cards to?

A Well, comes to my mind a lady by the name of Migdalia Nievez.

There was a fellow by the name of Julio. I don't recall his second name.

There was a Robert Ortiz.

There were others I don't recall.

Q And you gave Mr. Ortiz a card?

A Yes, I did. I gave him a card, and I also -- he showed some interest for the union --

MR. ENGELHARD: Objection, your Honor.

This question and the answer obviously is prior to the 10B period, obviously prior to the filing of the petition in this matter.

It is remote. Accordingly, your Honor, it is

irrelevant and immaterial to the questions that are before the Judge, before the NLRB presently.

MR. COFFEY: Your Honor, could we address that?

JUDGE DIXON: Tes,

MR. COFFEY: It is an essential part of the General Counsel's case that Robert Ortiz engaged in union activities.

We're establishing that Mr. Morales --

JUDGE DIXON: I would think so, too.

I don't understand your objection.

Overruled.

BY MR. COFFEY:

Q About when was it that you gave Ortiz a card?

A This was at that time, in September and October.

Q And did you give him one card or did you give him more than one?

A I gave him several cards to give to the other employees.

He gave me some of the back signed.

I stopped by, I would say, about a week, a week and a hlaf later, and I picked up a few more.

Q From him?

A Yes.

Q This is when?

A This was in --

Q What month?

A -- September and October.

Q I see.

Now, after October, Mr. Morales, what happened?

A I did -- I did not go around the place for a while because of all of the matters that come up.

And then I went back about two months later, which was around January.

I continued --

Q Of '74?

A January of '74, yes.

And I continued going around the place between January and June of 1974.

Q Now, did you have any further contact with any employeed?

A I did.

Again I gave some additional cards to Ortiz and perhaps sometime in, I would say, around April I gave some cards to a fellow by the name of Juan Cintron.

Q When did you give cards to Ortiz?

A Ortiz, I gave him additional cards around, I would say, around May, perhaps it could have been earlier.

Q And did Mr. Ortiz and Mr. Cintron return any cards to you?

A They did, they returned some of them.

JUDGE DIXON: These were signed cards, of course.

THE WITNESS: Yes.

JUDGE DIXON: Thank you.

BY MR. COFFEY:

Q Were there any other 1115 agents active at the Home during this period?

A Keith McKeon is also an agent for us.

Q Mr. Morales, can you tell us what happened in May of 1974?

A Yes.

I made an attempt to go into the -- to go into the Nursing Home through a -- it was a side entrance.

I was stopped by a lady who introduced herself as the housekeeper.

She said that I could not go into the premises.

So I left.

Q And when was this?

A This was, I would -- I don't recall whether it was at the -- I would say it was around mid-May.

Q I see.

Did you have any other occasion to try to enter the Home in May?

A I did.

Q When was this?

A There was another time in which I also made an

attempt to go into the nursing home.

I was stopped by a nurse.

I do not know her name.

She said that I don't want for anyone to come up with any --

MR. ENGELHARD: Objection, your Honor.

Unless we can find out who he's talking about --

THE WITNESS: I do not know the name.

JUDGE DIXON: Wait a minute.

MR. ENGELHARD: We don't know who he's talking about.

He's just identifying someone as a nurse who may or may not have been a nurse.

It may have been a stranger for all we know, your Honor.

MR. COFFEY: Your Honor, we'll connect this up through another witness.

JUDGE DIXON: Well, in any event, whether you connect it up or not, you can make what argument you want on that evidence.

I mean, I won't exclude him from testifying that he was stopped by somebody who he says was a nurse or even thinks she was a nurse.

Go ahead.

BY MR. COFFEY:

Q Now, what was your purpose in entering the building when this person you say was a nurse stopped you?

A I wanted to speak to Robert Ortiz.

He was -- he had a machine, I think a waxing machine, or whatever.

So I wanted to get his attention.

I wanted to speak to him about the cards that I had given him, whether he had additional cards to give me back.

Q To that purpose what did you do?

A I just walked out.

She said she would not allow me in the building.

I just stepped out.

Q This lady said she would not allow you to enter the building and you just stepped out?

A Yes.

Q Were you trying to enter the building?

A Yes, I was.

Q Where were you when this lady confronted you?

A I had just gotten -- there's like a vestibule.

There's like a second door.

I had gone through that second door already.

Q What were her words to you?

A Her words were that she would not allow for me to bring any propaganda about the unions or whatever.

Q Now, I direct your attention to the 11th of June. Can you tell us what happened on that date?

A The 11th of June, I was ther very early.

I would say I was there perhaps around 6:00 a.m. in the morning.

Q Where were you?

A I was outside the premises.

Q Of Queens Nassau Nursing Home?

A Yes.

Q Go ahead.

A And I was giving out cards.

There were some leaflets, we had made out some leaflets telling the people about the coming election and about voting for Local 1115.

I must have been there, I will say, for up until about 9:00 a.m. and then I left.

I returned ab ut, I'd say, 12:30, 1:00 p.m..

I made an attempt · perhaps I should state also that -- well, I did make an attempt to go into the premises, and I introduced myself to the switchboard operator or the receptionist, and I says, "I'm from Local 1115.

"I'd like to speak to some of the employeed."

She said, "Stop. Wait a minute."

So she went, left perhaps for a minute.

She said that she would be right back.

This gentleman here, Mr. "K",came out.

Q Are you talking about Mr. Krakowski?

A Yes.

He introduced himself.

I says, "I would like to have the same opportunity as the agents for" -- well, he asked me to state my business.

So I said, "I'd like to have the same opportunity that the 144 agents are having of going throughout the building."

He said, "I don't allow anyone in the building, any union business."

So I says, "That's not so."

I says, "I see the agents continuously, Mrs. Allen and the 144 agents."

He says, "That's not so." He says, "I will not allow you to go in. I do not allow anyone."

So I said, "I think that you are being unfair."

And with that, I left.

Q Now, Mr. Morales, on that date, on 6/11/74, had you seen anyone enter the building?

A Yes, I had seen Mrs. Allen; I had seen an agent that -- I don't know whether he is an agent, I think he is an organizer by the name of Craig.

I had seen Goodman enter the building.

Q Now, how long before you went up to try to get into the premises --

JUDGE DIXON: Listen, I'm not going to permit coffee or anything to eat during a hearing.

BY MR. COFFEY:

Q How long was it before you spoke to Mr. Krakowski that you saw agents from 144 enter the building?

A Well, they were -- this morning I had gotten there about 6:00; about 6:30, they had gone into the building.

When I left -- and this is about 9:00 in the morning when I departed from there for some other business, they were still in the building.

And even after I returned, they were still in the building.

Q How do you know that?

A They came out thereafter.

Q After you had spoken to Mr. Krakowski?

A Yes.

Q And you saw them?

A Yes, I did.

Q Whom did you see come out of the building?

A I saw -- I saw Goodman and I had seen this fellow by the name of Craig.

MR. ENGELHARD: I'm sorry, I couldn't hear the

first name.

THE WITNESS: Goodman.

JUDGE DIXON: Goodman.

MR. ENGELHARD: Thank you.

BY MR. COFFEY:

Q Did you see Mrs. Allen?

A Yes, I did.

Q And she came out of the building, also?

A No.

I had seen Mrs. Allen only in the morning, I did not see her at that time.

MR. COFFEY: Is there an agent of 144 named Craig something?

MR. KARASSIK: It's your case.

MR. COFFEY: I just want to ask you.

Do you have an agent named Craig?

MR. ENGELHARD: He was a person who --

MR. COFFEY: May we go off the record, your Honor?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: In an off-the-record discussion, your Honor, counsel for 144 has agreed to stipulate that Local 144 has an agent by the name of Craig.

JUDGE DIXON: All right.

MR. COFFEY: Is that so?

MR. ENGELHARD: Proceed.

BY MR. COFFEY:

Q Now, Mr. Morales, before June 11ths, had you ever seen 144 agents entering the Home at Queens Nassau Nursing Home?

A I did.

Q Can you tell us when you saw them entering the home?

A I would say I must have seen them perhaps three or four times at a minimum.

Q Can you tell us when you saw them?

A Usually they went in about 6:30 a.m. and they remained there until about 8:00 a.m.

Then they went in about 10:00 p.m., and other times they went in at 2:00 p.m..

Q Can you tell us who "they" were?

MR. KARASSIK: Please, your Honor, I submit that the answer wasn't responsive to the question.

The question asked him when he had seen them.

We got times rather than dates.

BY MR. COFFEY:

Q Can you tell us when in May and June of 1974, Mr. Morales, you saw agents of Local 144 enter the Queens

Nassau Nursing Home?

A I do not know the specific dates other than I know it was in June and I know that it was in May, the latter part of May.

Q And can you tell us about each particular instance in which you saw members of Local 144, representatives of Local 144 enter Queens Nassau Nursing Home that you recall?

A I'm sorry, I did not quite understand your question.

Q Give us each particular instance.

A That I saw them enter the Home?

Q Yes.

A Well, they would have gone in about -- I do know of one particular instance which was the 10th of June.

I do know a particular instance, the 11th of June.

Q And what did you see on the 10th of June?

A They went in.

Q Who is "they"?

A Craig and Mrs. Allen.

They remained there for a while.

Q How long -- how long were they there?

Did you see them leave?

A On the 11th when I left at 9:00 a.m., they had not left at that time.

Q How about on the 10th?

A The 10th, they remained there perhaps an hour.

Q Did you see them leave?

A Yes, I did.

Q When they entered the Home, did they have anything with them?

A They had leaflets.

I assumed that they were cards, signed cards and leaflets.

MR. ENGELHARD: Objection.

Do I understand the answer correctly that he said "I assumed he had cards"?

THE WITNESS: I do know leaflets, I assumed they had cards.

MR. ENGELHARD: I move to strike what he assumes.

JUDGE DIXON: Strike it.

BY MR. COFFEY:

Q Now, during May of 1974, can you give us any particular instance where you saw particular agents of 144 enter Queens Nassau Nursing Home?

And be as particular as possible, as specific as possible.

A In May of 1974?

Q Yes.

A There were several times.

I can't recall exact dates.

Q Can you recall who you saw go into Queens Nassau Nursing Home during May of 1974?

A Who?

Q Yes.

A Well, I recall usually the same agents; Mr. Godwin, Mr. Goodman, Craig and Mrs. Allen.

Q And you saw each of these people enter the home on different occasions?

A On Different occasions.

MR. ENGELHARD: I'm going to object, your Honor, on the grounds of materiality.

I do not quite understand the relevancy to the particular allegations of the complaint that this witness is testifying to now.

I would ask that we be so advised.

JUDGE DIXON: Well, I would think it goes to disparity of treatment by the respondent.

MR. ENGELHARD: I understand the reason for going into this, but I don't understand, your Honor, particularly this testimony with regard to not being permitted to go in.

We have certain allegations in the complaint regarding particular individuals on behalf of the employer, or joint employer, if you will.

MR. COFFEY: We haven't produced our witness who knows that Mrs. Wield is the individual who stopped Mr. Moranles from entering the front door.

MR. ENGELHARD: I think we have a right to be advised before a hearing as to what we have to defend against.

Even at this moment there is no motion to amend the complaint to cover this particular allegation.

MR. KARASSIK: The respondent Queens Nassua joins in the objection, Your Honor.

JUDGE DIXON: What's your position?

MR. COFFEY: Your Honor, we feel that the complaint is reasonably constructed sothat these allegations can be taken care of.

JUDGE DIXON: You show me where in the complaint you feel that you can come in with this testimony.

MR. COFFEY: Yes, your Honor.

May I amend the complaint at this time, your Honor, to --

JUDGE DIXON: Well, I'll let you amend the complaint all right.

MR. COFFEY: Paragraph 19 of the complaint, your Honor.

Let me see. 19 is already amended to be 19-B, so we would further amend paragraph 190B, your Honor, of the

complaint to read:

"On or about June 11th, 1974, and on other dates presently unknown during May and June of 1974, respondent Cycle, and Joint respondents, by Al Krakowski and Mrs. Wield, their supervisors and agents, and other supervisors and agents presently unknown, refused to accord to Local 1115, upon its request therefore, the same privileges previously granted and extended to Local 144, as described above in paragraph 18."

JUDGE DIXON: You want to amend paragraph 19 to read as you have read it?

MR. COFFEY: Yes, your Honor.

JUDGE DIXON: Do you want to be heard on the motion to amend?

MR. ENGELHARD: Yes, your Honor.

JUDGE DIXON: All right, let's hear it.

MR. ENGELHARD: I believe at this late date, after the trial of the formal hearing in this matter has commenced, after the pleadings have once more been amended supposedly to cover all of the allegations known, after witnesses have testified and after we have called witnesses or a number of witnesses have been present, the General Counsel now seeks to amend the complaint.

I believe that it is surprise, and I think it is not timely at this point to amend the complaint.

We would, therefore, oppose it, your Honor.

JUDGE DIXON: Anybody else want to be heard?

Well, let me say that as far as I'm concerned, the regulations provide that the complaint can be amended anytime up to the time of the decision of the Administrative Law Judge.

I won't foreclose the General Counsel from amending his complaint at this point in the respect that he has moved.

On the other hand, if necessary, I will give you additional time to prepare for the amendment.

That's all I can say to you.

MR. ENGELHARD: Thank you.

JUDGE DIXON: The motion is gratned to amend, as indicated.

Now, how much more do you have with this witness?

MR. COFFEY: A few more minutes, your Honor.

JUDGE DIXON: Well, I was going to say that I have to make a call to Washington, anyway.

I think maybe I will take a ten-minute recess at this time, and you people can have your coffee.

(Recess taken at 10:25 o'clock a.m.)

(Resumed at 10:35 a.m.)

JUDGE DIXON: Back on the record.

You may proceed.

BY MR. COFFEY:

Q Now, during May of 1974, Mr. Morales, on how many separate occasions did you see Mrs. Allen enter Queens Nassau Nursing Home, to your recollection?

A I would say a minimum of three or four times.

Q Now, when you saw her enter the Queens Nassau Nursing Home, how many times did you see her enter alone?

A Most of the time she was with another agent.

MR. ENGELHARD: Can the witness speak up a little bit, please?

THE WITNESS: Yes.

Most of the time she was with another agent.

BY MR. COFFEY:

Q Can you identify that other agent she was with?

A Yes.

Q Who?

A There was a Mr. Godwin at times, other times -- there was also a Spanish fellow, spoke Spanish.

I heard him talking to some of the Spanish-speaking people.

He also went in, not too many times, I would say perhaps one or two times, I would say maximum.

Q So there were times when she went in with more than one other agent from Local 144?

A Yes.

Q I see.

How many times did you see this fellow Craig go into the Queens Nassau Nursing Home during May of 1974?

A Craig went into the Nursing Home almost every day.

He drove someone to work, I don't know who the person was, and he came in at about quarter to 7:00.

He went into the premises with this person every day -- well, I will not say that he went in every day, but most of the time he went in when he brought this person and stayed there anywhere from fifteen to twenty minutes, perhaps longer.

Q How many times did you see him go in?

A I will say at least four times.

Q Why were you at Queens Nassua Nursing Home on these occasions?

A Excuse me?

Q Why were you at Queens Nassau Nursing Home on these occasions?

A Well, I was trying to get the people to vote for our union, and I was giving out cards, and I was giving out leaflets.

Q Were you ever giving out cards and leaflets inside Queens Nassau Nursing Home?

A No, I never did.

Q Did you ever see any other agents of Local 144 enter

MORRIS WILKINSON,

having been previously duly sworn by The Administrative Law Judge, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. COFFEY: (Cont.)

Q Mr. Wilkinson, you heard Mr. Morales testify this morning that he had a conversation with you at sometime in which some matters relating to Queens Nassau Nursing Home and the -- were mentioned?

Do you -- did that refresh your recollection as to any matters that you had discussed with Mr. Morales?

A Yes, it does.

Q Do you recall an occasion when you did discuss anything with Mr. Morales?

A Yes.

Q Tell us about that.

A Yes.

One day outside by the compactor, I was taking some garbage out.

He approached me, and he wanted to hand me some cards where, you know, he asked me to distribute them in the nursing home.

I said, you know, no, that I might lose my job if I did that.

Q Now, Mr. Wilkinson, there's only one other question in this area:

The check from Queens Nassau for one day's work is dated -- for the period ending, it actually uses the words, "for the period ending," October 30, 1973, and your first stub is for the period ending November 11th, 1973.

Do you have any intervening checks?

A Like I said, I might have, you know --

Q Would you recall whether or not Cycle Cleaning paid you during that intervening period of time or whether it was Queens Nassau?

A Well, like I said, I thought -- I might have had two checks from Queens Nassau, but I don't remember because I might have gotten rid of it or whatever.

Q So at the most, then, you were paid for a week and one day from Queens Nassau?

A Most likely, yes.

Q All right.

Those are yours, I'm sorry (handing).

Now, Mr. Wilkinson, you stated that you met Mr. Morales, he offered some authorization cards to you, and you said you refused them upon the ground that, "I might lose my job."

A Yes.

Q Would you tell us what prompted you to make that remark?

A Because at the time Robert Ortiz was working there, and he had lost his job, and I asked him why.

He said that it was because he was fighting for 1115, that's why I told him that.

Q So you received your information from an employee who had been discharged by Cycle previously; is that correct?

A Yes.

Q And did any supervisory employee or any employee of Cycle Cleaning at any time threaten you with a loss of job if you compaigned for any union?

A No.

Q Did any supervisory or other employee of the Queens Nassau Nursing Home threaten you with any reprisals or loss of your employment if you engaged in activities on behalf of 1115?

A No, nobody at Queens Nassau.

Q What's that?

A Nobody at Queens Nassau.

MR. KARASSIK: Nothing further.

MR. KAYSER: No questions, your Honor.

MR. COFFEY: No further questions, your Honor.

JUDGE DIXON: You may be excused.

MR. KAYSER: You cut him off, Mr. Coffey.

MR. ENGELHARD: No questions.

MR. COFFEY: There are so many voices.

JUDGE DIXON: You may be excused.

(Witness excused.)

JUDGE DIXON: All right.

Call your next witness, please.

MR. COFFEY: General Counsel calls Esther Watkins to the stand, your Honor.

Whereupon,

ESTHER WATKINS,

was called as a witness for the General Counsel, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Esther Watkins.

Q Where do you reside?

A -160-23 121 Avenue, Jamaica, New York.

Q Miss Watkins, did you work for Cycle Cleaning Company?

A Yes, I did.

Q Do you still work for them?

A No, I don't.

Q How long did you work for them?

A I worked for them until July -- until the end of July of '74.

Q As what?

A Area supervisor.

Q And how long were you area supervisor for Cycle Cleaning?

A About two and a half years.

Q I see.

Did you have the power to hire and fire?

A Yes.

MR. COFFEY: Can we get a stipulation as to the fact that Watkins was a supervisor of at least Cycle Cleaning Corp.?

MR. KAYSER: So stipulated.

MR. KARASSIK: No objection.

MR. ENGELHARD: No objection.

JUDGE DIXON: All right.

The stipulation is received.

Proceed.

BY MR. COFFEY:

Q When did Cycle Cleaning get its contract with Queens Nassau Nursing Home?

A I think it was November 3rd or 4th of '73.

Q Are you familiar with the contract?

A No.

Q Were you immediately -- did you immediately come to Queens Nassau Nursing Home and assure duties there?

A Yes.

Q How often a week were you at Queens Nassau Nursing Home?

A In the beginning, I was there about, I would say, three weeks or a month, every day.

After that we got a housekeeper, and I was in maybe a couple of times a week, once a week maybe.

Q Was there a house keeper at Queens Nassau Nursing Home when you arrived?

A Mr. Lebowitz was acting housekeeper at the time.

Q And how long did he -- how long did he continue being active housekeeper, acting housekeeper, I mean?

A I think until we were able to get someone that was suitable.

Q And when was that?

A About three, four weeks, I would say, maybe six weeks.

I don't know for sure.

Q Isn't it true that Mr. Lebowitz remained the housekeeper until January 1974?

MR. KARASSIK: I object to the form of the question.

JUDGE DIXON: Well, you're leading the witness.

MR. COFFEY: Your Honor, I'd like to declare this witness a hostile witness at this point.

JUDGE DIXON: You haven't shown any basis to declare the witness hostile.

MR. COFFEY: All right, your Honor.

BY MR. COFFEY:

Q Did you -- strike that.

MR. COFFEY: Would you please mark this as General Counsel's Exhibit No. 13 for identification, please.

(Statement so marked for identification as General Counsel's Exhibit No. 13.)

BY MR. COFFEY:

Q I refer you to General Counsel's Exhibit No. 13 for identification.

Is this the statement that you signed on the 23rd day of August, 1974 (handing)?

A Yes.

Q I refer you to the second paragraph.

A Can I read this by myself?

Q Sure.

A I've read it.

Q Now, Miss Watkins, does this refresh your recollection?

A Sure.

Q How long did Mr. Lebowitz remain as the housekeeper?

A I said I don't remember.

Until he became ill.

When that was, I don't know.

MR. ENGELHARD: I'm sorry, I can't hear the witness.

THE WITNESS: Mr. Lebowitz was acting housekeeper until he became ill.

But how long that was, I don't remember.

BY RM. COFFEY:

Q Can you -- was it more than three or four weeks?

A Before he got ill --

Q Yes.

A -- that Cycle came in?

Q Yes.

A I will say yes, he was there three or four weeks, possibly five.

Q After Cycle came in?

A Yes.

Q Before he became ill?

A Possibly.

I'm not going to say definitely on that because I don't remember.

Q Now, how long was he ill?

A I would say two or three weeks, maybe longer.

Q And while he was ill, who took over for him?

A I think it was John Workman, I think it was.

MR. ENGELHARD: John who?

THE WITNESS: Workman.

BY MR. COFFEY:

Q And who was Mr. John Workman?

A He was the housekeeper.

Q For whom?

A Cycle Cleaning.

Q Now, when Mr. Lebowitz came back from his illness, who was the housekeeper?

A Mr. Workman.

Q I ask you again --

A Oh, no.

I don't need to.

Q Okay.

When Mr. Lebowitz came back from his illness --

A Yes.

Q -- who was the housekeeper?

A Mr. Workman was for a while.

Q How long?

A A couple of weeks.

Q And then what happened?

A Mr. Workman left.

Q Then what happened?

A Mr. Lebowitz was again in charge until we got

Mr. Mintz, I think it was.

Q How long was that?

How long was Mr. Lebowitz again in charge?

A This was a few weeks.

Q a few weeks?

A Approximately a few weeks.

Q Now, what are the duties of a housekeeper?

A Is to assign the porters and the maid to certain areas to do certain things, you know, at time intervals.

Q Is he considered a supervisor?

A Sure he was.

Q Does he hire people?

A He was considered a housekeeper.

Q Can a housekeeper hire people and fire people?

A Yes.

Q Can he assign them work?

A Not a housekeeper, no.

I don't know, with Cycle, yes.

Q With Cycle, yes?

A Wait a minute now.

Let me state that again.

I don't know about other places, but at Cycle a housekeeper must get in touch with his or her supervisor.

Q Mr. Lebowitz exercised all the duties of a housekeeper?

A Yes.

Q Now, was he being paid by Cycle Cleaning at the time?

A I really don't know.

Q Mr. Lebowitz?

A I really don't know.

Q Isn't it a fact that he was being paid by Queens Nassau Nursing Home at the time?

A I really don't know.

Q Who selected the new housekeeper after Mr. Lebowitz was promoted to assistant administrator at Queens Nassau Nursing Home?

A Cycle.

Q Cycle?

A Yes.

Q Who selected him?

MR. KARASSIK: She just answered that question.

BY MR. COFFEY:

Q I refer you again to your statement of August 24th,

MR. KARASSIK: Your Honor, the witness hasn't indicated that she needs any refreshing of her recollection.

JUDGE DIXON: That's right.

MR. KARASSIK: The use of the paper is improper.

JUDGE DIXON: What basis do you show it to her?

MR. COFFEY: Her statement contains different testimony, your Honor.

MR. KARASSIK: Is he trying to impeach his own witness?

MR. COFFEY: Your Honor, we consider this witness a hostile witness.

JUDGE DIXON: All right, I'll let you cross-examine then.

Go ahead.

BY MR. COFFEY:

Q Isn't it true that Mr. Lebowitz selected Mr. Mintz as the housekeeper?

A He was interviewed by -- I don't know what made Mr. Mintz come there.

But he was interviewed by Mr. Roth, Mrs. Herschler and myself.

Q Did you tell the Board that Mr. Lebowitz selected Mr. Mintz as the new housekeeper?

A I said he recommended him.

Q Did he say he selected him?

A No, I don't think so.

Q I refer you to your statement of August 1974 (handing).

A That's not quoted right.

MR. KAYSER: I'm sorry, I could not hear the answer.

THE WITNESS: That's not quoted right.

BY MR. COFFEY:

Q Who selected Mr. Mintz?

A I don't know how Mr. Mintz got there.

But I know he was interviewed by Mr. Roth, Mrs. Herschler and myself.

Q Was he also interviewed by Mr. Lebowitz before he was hired?

A All go in and speak to the administrator and assitant administrator before they are hired.

Q Did he --

A I mean after we interview them.

Q After you interview them?

A Yes.

Q I see.

Who hired Mr. Klein?

A Again, he was interviewed by, at that time, Mr. Roth and myself.

Q I refer you to your statement of August 24th.

A After he was --

Q Would you read that out loud?

A Yes.

It says -- can I read the whole thing?

Q Yes.

A All right.

"Mr. Klein was hired by Mr. Lebowitz and after his hiring he was spoken to by me so I could explain his duties and responsibilities."

Q Is that true?

A Yes.

Q So it was only after Mr. Klein was hired by Mr. Lebowitz that you spoke to him, Mr. Klein, about his duties and responsibilities?

A Right.

Q Okay.

MR. ENGELHARD: Excuse me.

I have an objection.

I don't know where we're going with this, with this line of testimony, but so far the statements that have been made by the witness are not inconsistent with the questions.

I don't know why it's necessary to keep refreshing the witness' recollection from the statement.

BYMR. COFFEY:

Q Now, before Mr. Paul was hired as a housekeeper and before you told him that he was hired as a housekeeper, did you take him to be interviewed by Mr.Lebowitz?

A Before that he was interviewed by Mr. Roth, Mrs. Herschler and myself.

Q But before he was told he was hired, he was inter-

viewed by Mr. Lebowitz?

A I --

MR. KARASSIK: Excuse me.

I object to the question as being irrelevant.

The legal question involved is who had the ultimate ability to hire, fire and take other disciplinary action.

Any intervening interviews by people is not relevant to the inquiry at all.

MR. COFFEY: First of all, I think it's very relevant, your Honor.

It shows control of Queens Nassau Nursing Home over the hiring policy of Cycle Cleaning.

That goes to the issue of joint employer.

JUDGE DIXON: Well, I must be -- I must confess that I'm thoroughly confused about this stage of the matter.

I don't understand --

MR. COFFEY: Your Honor --

JUDGE DIXON: -- the situation, I can say that.

MR. COFFEY: Your Honor, Queens Nassau Nursing Home has denied that they are a joint employer with Cycle Cleaning in their statement, in their answer.

MR. KARASSIK: But your questions have no relevancy to that issue.

MR. COFFEY: We feel they are very relevant based on cases such as the Greyhound Bus case, which I will

give a copy to your Honor to read if you would like.

JUDGE DIXON: Well, I'm not going to stop now to read it.

MR. COFFEY: I think that the question of who hires Cycle's supervisors and who passes on whether they are acceptable or not is germane to the issue of --

JUDGE DIXON: Go ahead.

MR. COFFEY: -- whether Queens Nassau Nursing Home is a joint employer with Cycle.

BY RM. COFFEY:

Q Now, I refer you to your statement again.

MR. KARASSIK: What for, your Honor?

He keeps referring to a statement.

JUDGE DIXON: Why don't you get the testimony without the statement?

MR. COFFEY: She said she didn't know.

JUDGE DIXON: I didn't hear that.

BY MR. COFFEY:

Q Did you take Mr. Paul to Mr. Lebowitz for an interview prior to telling him he was hired by Cycle Cleaning?

A No.

Q You did not?

A No.

Q I refer you to your statement of August 1974.

Will you read it, please, over here (indicating).

A Out loud?

Q Yes.

A "I took Paul" --

MR. ENGELHARD: I'm going to object to this reading out loud.

A -- "to the" --

JUDGE DIXON: Let her read it and see if it refreshes her recollection.

A "I took Paul over to" --

MR. ENGELHARD: Excuse me, I was objecting to your reading it out loud.

JUDGE DIXON: Read it to yourself.

THE WITNESS: All right.

BY MR. COFFEY:

Q Now, I ask you again, Miss Watkins, prior to telling Mr. Paul he was hired by Cycle Cleaning, did you tak him to Mr. Lebowitz for an interview?

A Yes.

Q And after you interviewed -- and after Mr. Lebowitz interviewed Mr. Paul, what did he say?

A Mr. Lebowitz said he was pleased with, you know, the interview that he had conducted with him.

Q Did he say that Mr. Paul was satisfactory to him?

A He said possibly.

Q And who worked out Mr. Paul's salary?

A Cycle.

Q Cycle?

A Yes.

Q Did Queens Nassau Nursing Home have anything to do with it?

A I really don't know.

Q I refer you to your statement of August 24th again (handing).

A Where do you want me to read?

Q Over here (indicating).

A That's natural.

Q What's natural?

A You can't hire a housekeeper and pay him $500 a week if the management is not going to pay but, say, a hundred dollars.

Q So -- the management of who?

A Of Queens Nassau.

That's who the contract is with.

Q So Mr. Paul's salary was worked out in advance, ahead of time, with Queens Nassau Nursing Home?

A I really don't know ahead of time or when it was worked out.

But these are things that are discussed in the contract, which I'm not at all familiar with.

Q To your Knowledge, did Queens Nassau Nursing Home

have anything to do with setting the salary of Mr. Paul?

A No, I don't.

Q Did you tell us in your statement that --

MR. KARASSIK : You know, your Honor, it's perfectly--

BY MR. COFFEY:

Q -- that Mr. Paul's salary was worked out --

MR. KARASSIK: Just a minute.

Your Honor, it's perfectly clear, at least to this counsel, that the statement obtained from the witness was obtained in such a manner as to slant things to a predestined conclusion.

It's obvious that everything she says here is not what she intended.

I think that we should get what she intended and what is the fact by testimony without eliciting -- without referring to this written statement.

I think she should, to the best of her knowledge, testify as to what the facts are, you know, without going back and forth with prior contradictory statements prepared by the Board.

MR. KAYSER: Your Honor, may I comment also?

JUDGE DIXON: All right.

MR. KAYSER: Cycle hasn't taken a position or objected to this questioning only because Cycle will accept any version of the facts General Counsel wants

here.

However, I agree with Mr. Karassik that it appears to me that his observation is accurate as to the way this particular statement was obtained and as to why this witness is testifying in the way she is.

JUDGE DIXON: Well, I don't -- well, I don't subscribe to that view, that it's obvious that the statement was slanted.

I don't see any reason to take that position.

The witness gave a statement.

Now, the question is whether the testimony is going to be consistent with it?

I don't accept the fact that the statement was taken with the purpose of slanting it.

I don't see any justification for that.

BY MR. COFFEY:

Q As far as you know, was Mr. Paul's salary cleared with Queens Nassau Nursing Home before he was hired?

A No, I don't know.

Q You don't know?

A No.

Q Could you tell us, as far as you knew Mr. Paul's salary was worked out by Respondent and representatives of Queens Nassau Nursing Home?

A Yes.

Q You said that?

A As far as I know.

But hwat it was, I don't know.

Q Did you ask -- strike that.

How did you know -- how did you know to make that statement?

A Make what statement?

Q That Mr. Paul's salary was, as far as you knew, was worked out by representatives of Queens Nassau Nursing Home and Mr. Roth?

On what basis did you make that statement?

A Any contract is based on the employees and the housekeeper's salary.

Now, this much I know. I mean, because you go into some places that say --

Q How did you know that Queens Nassau Nursing Home--

MR. ENGELHARD: Objection.

Can she finish the answer, your Honor?

MR. COFFEY: I thought she was.

JUDGE DIXON: No, she was talking still.

Go ahead.

A There are some areas that you go into that the salary isn't the same, so it would have to be worked out between management and Cycle Cleaning in their contract in order to arrive at a salary for the housekeeper,for

the porters, the laundry workers and what-have-you.

Q The management of the home?

A Yes.

Q Okay.

Thank you.

Now, Miss Watkins, I direct you to the 23rd of April 1974.

There was a meeting at a bar near the nursing home.

Did you attend that meeting?

A Not in the sense of attending the meeting.

Q Were you present?

A I went there.

Q Were you introduced?

A No, I was not.

Q Did you tell the Board that Mrs. Allen may have introduced me by saying this is Mrs. Watkins, who you all know?

A She said --

MR. ENGELHARD: Objection.

JUDGE DIXONS: Just a minute.

MR. ENGELHARD: I'm going to object to the reading of the statement into the record at this point, your Honor.

At most, certainly at this point, the witness' recollection can be refreshed.

But I would think that the proper --

MR. COFFEY: She --

MR. ENGELHARD: Excuse me.

I would think the proper testimony would come from the witness after she testifies.

JUDGE DIXON: Well, that's the technical, right way to do it.

I think it's a lot quicker and cleaner to let counsel read what a previous statement is made, assuming that he's identified the statement, and say:

Did you say -- did you give a statement to this effect, so-and-so?

I think it's much more handable by everybody when we read this record in going over it again.

The result that you've got in mind is going to be reached anyhow because the fact of the matter is that with this kind of testimony coming in, if no one else offers the statement in evidence, I'm going to have it come in as an exhibit of my own.

MR. ENGELHARD: Except, if your Honor please, the difference is that if the statement was written out as a letter, e.g., by the witness in her own words and signed as a personal letter, it would be one thing.

These statements are statements that are prepared from information -- by representatives of the Board upon

information.

Consequently, this may not be the normal way of the witness expressing it.

Now, earlier there were certain questions asked concerning interviews -- Ithink it may have been Mr. Paul -- and the question was when the interview took place and when were the duties explained.

Now,I can conceive, e.g., your Honor, an interview being -- an interview taking place, a person being hired, and then subsequently the duties explained in full.

Now, whether or not that happened, I don't know.

But certainly that would still be consistent with the statement that was made by the witness, which is not explained in the statement that counsel for the General Counsel has.

JUDGE DIXON: Well, we can do it your way if you want.

It's going to take a lot longer.

If you want to -- go ahead and show her the statement, let her read it for herself and then ask her if it refreshes her recollection.

When she says it doesn't, then you're going to ask it over again anyway.

BY MR. COFFEY:

Q Did Mrs. Allen announce you to the meeting?

A A question was asked of her.

She says, "Well, I'll let Miss Watkins answer that question.

"MAYbe she can answer it. You all know her."

MR. COFFEY: That's all , your Honor.

JUDGE DIXON: All right.

MR. KAYSER: Your Honor --

MR. COFFEY: Your Honor, on that point --

JUDGE DIXON: You mean you got more?

MR. COFFEY: Yes.

JUDGE DIXON: Then don't mislead us like that.

MR. COFFEY: I'm sorry, your Honor.

BY MR. COFFEY:

Q Miss Watkins, can you explain in detail what the duties of a housekeeper are?

A The duties of a housekeeper is to make schedules, job descriptions, supervise work to be done, train a new employee if need be, no -- have a little knowledge of the equipment, knowing whether it's properly used or able to instruct proper usage of it.

MR. COFFEY: No further questions, your Honor.

JUDGE DIXON: All right.

MR. KAYSER: Your Honor, I have no cross-examination of this witness.

I reserve the right to recall her as Cycle Cleaing's

own witness at the appropriate time.

MR. ENGELHARD: No questions, your Honor.

CROSS-EXAMINATION

~~BY MR. KARASSIK:~~

Q Mrs. Watkins, the contract between Queens Nassau Nursing Home and Cycle Cleaning required Cycle Cleaning Company to perform certain housekeeping functions within Queens Nassau Nursing Home.

Is that correct?

A Total cleaning.

Q And the performance of that function, did that require that you work closely with the administrative personnel of the nursing home?

A Yes, all department heads, you have to.

Q Would it in fact be necessary in the performance of those duties that the administrative, or supervisory personnel, exercise some degree of supervision or control over Cycle employees?

A Yes.

Q Who in fact had the -- who -- strike that.

Who could effectively hire and fire a housekeeper under the terms of that contract between Queens Nassau and Cycle?

A That I can't truthfully answer.

Q Well, in terms of your statement that you had towork

closely with the administrative or supervisory personnel of the nursing home in order to perform your contractual responsibilities, was that in any way related to the fact that new applicants for the job were brought over to the nursing home to be interviewed by Mr. Lebowtiz or others?

A This only concerned, say, the housekeeper; the porters or the maid was interviewed and hired by, say, myself or the housekeeper himself.

Q So that -- before I go on with that, would you tell us what type personnel you supplied to Queens Nassau Nursing Home?

A We supplied porters and maids.

Q Porters and maids?

A Yes.

Q Now, in the hiring of porters and maids, Mrs. Watkins, did you in any way consult with the supervisory staff of Queens Nassau Nursing Home?

A No.

Q That was done by the housekeeper appointed by Cycle Cleaning Company at the Nursing Home?

A Yes.

Q Now, when it became necessary, as it did become necessary from time to time, to change housekeepers, you've testified that they were interviewed by a supervisory personnel at Queens Nassau.

A Yes.

Q Why did that interview take place?

A Well, we found in the past that we -- say, if -- let me see how to put it.

The fact that management and housekeeping, what-have-you, did have to work together, we found that it worked out much better if we had an interview with, say, the administrator or assistant administrator or what-have-you.

We tried to work together in that line.

We found it was more successful than just bringing in a stranger in and have personality clashes, if nothing else.

Q Was it in fact Cycle that hired the housekeeper?

A Yes.

Q Was the housekeeper in fact on Cycle's payroll?

A Yes.

Q And did the employees of Cycle, including the housekeeper -- were they paid any fringe benefits or share in any profit sharing or in any way receive compensation directly from Queens Nassau Nursing Home?

A Not to my knowledge.

Q Now, Mrs. Watkins, whose responsibility was it to set schedules for porters and maids?

A Say, the master schedule, I drew up.

Q You , personally?

A Yes.

Q And did that show which days of the week each of the various employees were to work?

A Yes.

Q And did it show which employees were to work on holidays?

A Yes.

Q And did it indicate which shift the various employees were to work?

A Yes.

Q And did you consult with anybody in Queens Nassau Nursing Home in determining which of your employees should work on which shift and what days of the week?

A No.

Q This was done completely by Cycle through you?

A Right.

Q Is your bookkeeping integrated in any way with that of the Queens Nassau Nursing Home, or do you have your own bookkeeping system?

A Cycle has an office,that of the bookkeeper.

Q Does Cycle render this type of service to more than one institution than the Queens Nassau Nursing Home?

A Numerous.

Q Numerous?

A Yes.

Q In May and June of 1974, Mrs. Watkins, would you have any personal knowledge of about how many various nursing homes Cycle had contracts with, approximately?

A Say seven, eight.

Q And where are these nursing homes located?

A Staten Island, Rockaway, Astoria, College Point.

Q Would it be fair to say that they're within the geographic confines of the City of New York or were they outside of the City of New York?

A Staten Island is, I guess --

Q A part of the City?

A Well -- yes.

Q We've let them in recently.

A Yes.

Q So that they were within the five boroughs of New York City --

A Yes.

Q -- is that correct?

A Yes.

Q You said that among the housekeeper's responsibilities was the preparation of job descriptions.

Is that correct?

A Yes.

Q Did each employee receive a copy of these job descriptions from Cycle Cleaning?

A They were posted on the Bulletin Board by the housekeeping office, and each porter's closet had a job description posted, also.

Q Now, when you say porter's closet, is that physically within the Queens Nassau Nursing Home?

A On each floor,wing of each floor, is a porter's closet.

Q And the home allowed you then to post these job descriptions where the porters --

A Oh, yes.

Q -- would be able to see them; is that correct?

A Yes.

Q Do you have personnel policies?

A Yes.

Q And whoare they drawn up by?

A Cycle has a master schedule of the personnel procedures.

Q Personnel policies and procedures?

A Yes.

Q In formulating your job descriptions, personnel policies and labor policies, do you do that in conjunction with Queens Nassau or is that the sole function of Cycle Cleaning Company?

A Say that again.

Q Yes.

The drawing up of these various job descriptions, the drawing up and dissemination, delivery, if you will, of these personnel policies, is --

A Okay.

Q -- that a joint venture of Queens Nassau Nursing Home and Cycle Cleaning Company or is that Cycle by itself?

A No; strictly Cycle.

Q Do you have any personal information as to who are the owners of Cycle and who are the owners of Queens Nassau, or should I leave that to somebody else?

A You'd better leave it to somebody else.

Q Now, who had the right to fire porters and maids?

A I did with direction, unless it was of such a case that I did it immediately.

Q Who would you take direction from?

A From the operating manager or Mr. Roth.

Q Are both of those employees of Cycle?

A Mr. Roth is the owner of Cycle.

Mrs. Heschler is the operating manager of Cycle.

Q So one is an owner and one is an employee --

A Right.

Q -- of Cycle?

A Right.

Q And disciplinary action, who could effectively

recommend disciplinary action of porters and maids employed by Cycle Cleaning?

A Who could --

Q Yes.

Well, let me put the question directly to you.

Would disciplinary action with respect to porters and maids be taken by a supervisory employee of Queens Nassau or by Cycle?

A By Cycle.

Q By Cycle?

A Yes.

Q What were the circumstances under which Mr. Klein was fired?

Do you know?

A It was of a personal nature, I think.

Q It was a personal thing?

A Personality, yes.

Q Who fired him?

A Cycle.

Q He was fired by Cycle?

A Yes.

Q Was any recommendation or consultation had with the Queens Nassau Nursing Home before he was fired?

A I --

Q That you know of, of course?

A I think so.

Q And who made the ultimate decision?

A Cycle.

Q Now, you've been asked about Mr. Paul, and I'll ask you the same question.

Was he effectively hired by Cycle?

A Yes.

Q And Mr. Klein, was he effectively hired by Cycle?

A Yes.

Q And who else do we have?

Mr. Workman, was he effectively hired by Cycle?

A Yes, he was transferred.

Q He was transferred from another Cycle job?

A Yes.

Q So Mr. Workman had already been in Cycle's employee-

A Yes.

Q -- at that time; right?

A Yes.

Q Now, when you send a porter or a maid into the Queens Nassau Nursing Home, is it custom and practice for the Queens Nassau Nursing Home to take any one of these employees out of their scheduled job and assign them to a nurse's aid's job or to assign them to a kitchen job or anything of that sort?

A Well, this very rarely happens.

In case of emergency, there's no one who is held to job descriptions.

Q Would you catagorize the kind of circumstance into which someone is taken out of classification as being an emergency-type situation?

A Well --

Q Now, by "emergency," I don't mean that the roof is falling down but perhaps someone has not shown up for a job or that, you know, they have an empty slot and they have to get something done.

That type of an emergency.

A Yes. I understand what you mean.

For instance, one afternoon both elevators broke down.

There is a third floor for patients there.

The porters were asked not only to help carry the trays up the steps but to stay over, which all of them said yes, you know, without hardly any question and did.

Q Where is the office of Cycle Cleaning located?

A 164th Street off Union Turnpike in Flushing.

Q Is that where the Queens Nassau Nursing Home is located?

A No.

Q They have their own independent offices?

A Yes, I guess so.

MR.KARASSIK: Thank you very much, Miss Watkins.

REDIRECT EXAMINATION

BY MR. COFFEY:

Q Who fired Mr. Mintz?

A Cycle.

Q And who from Cycle fired him?

A I think it was Mrs. Herschler, the operations manager.

Q Why did she fire him?

A Beg your pardon?

Q Why did she fire him?

MR. KARASSIK: I object to the question.

The grounds for his discharge are not relevant here, it's who had the authority.

JUDGE DIXON: Well, I'll sustain the objection.

BY MR. COFFEY:

Q Did she fire him because there were complaints from Queens Nassau Nursing Home about him?

MR. KAYSER: Objection.

A I really don't know.

Q You really don't know?

JUDGE DIXON: Overruled.

A I really don't know.

Q I refer you to your statement, Miss Watkins (handing).

A It's possible.

Q Was Mr. Mintz fired after complaints by Queens Nassau Nursing Home?

A Yes, I would say it's possible.

Q Yes or no?

A Yes.

Q How about Mr. Klein, was he fired after complaints by Queens Nassau Nursing Home?

A Yes.

Q Who from Queens Nassau Nursing Home complained?

A I would say the department heads.

Q Now, who hired Mr. Klein?

A I --

Q Which person, which individual?

A Well,he was interviewed by Mr. Roth and Mrs. Herschler and myself.

So I would say Mr. Roth hired him, I mean.

Q I refer you to your statement again.

A Okay.

Q Now, who hired Mr. Lebowitz -- who hired Mr. Klein?

A Mr. Lebowitz?

Q Who hired Mr. Klein?

A I guess it was in conjunction with Mr. Lebowitz.

Q Mr. Lebowitz hired Mr. Klein; is that true?

A I don't know.

MR. KARASSIK: Objection.

BY MR. COFFEY:

Q You don't know?

A I don't know.

Q Did you tell the Board that Mr. Lebowitz hired Mr. Klein?

A It's possible.

Q I refer to your statement.

Did you tell the Board that Mr. Klein was hired by Mr. Lebowitz?

A It's possible.

Q Will you read your statement?

A I did read it.

Q Would you read it outloud from here (indicating)?

MR. KARASSIK: I object, your Honor.

You don't have to prejudice the record with her reading it out loud.

If it's being used for the purpose of her refreshing her recollection, she can read it to herself.

Also, your Honor, at this particular point I would submit that he's using this statement not to refresh her recollection but for a prior inconsistent statement.

For that purpose, your Honor, I think it has to be marked into evidence.

JUDGE DIXON: Well, I'm going to have it in evidence one way or the other.

BY MR. COFFEY:

Q Now, did you tell the Board that Mr. Klein was hired by Mr. Lebowitz?

A Yes, according to this, I said it.

Q Is that the truth?

JUDGE DIXON: Well, for my information, who is Mr. Lebowitz?

M R. COFFEY: Your Honor, Mr. Lebowitz is the assistant director of Queens Nassau Nursing Home, who also acted as a housekeeper.

We have testimony to that effect.

BY MR. COFFEY:

Q Now, did you also tell us that it was only after he was hired that he was spoken to -- that he was referred to you so you could explain to him his duties?

A I didn't see him before he was hired.

Q So you didn't see him before he was hired?

A Right.

Q You spoke to him after he was hired?

A Yes.

Q About his duties?

A Yes.

Q Do housekeapers discipline employees?

A Only to the fact that they give them warning notice

for things.

MR. ENGELHARD: Objection.

Which employees are you talking about?

MR. COFFEY: Porters, employees of Cycle.

A Yes, give them warning notices.

Q And Mr. Lebowitz was the housekeeper?

A At one time.

Q After Cycle was already in the home?

A Yes, until we got someone.

Q I see.

Now, Miss Watkins, when Mr. Lebowitz was sick, was he not temporarily replaced?

A No.

Q He wasn't temporarily replaced?

A It was -- he was replaced.

Q When he came back, did he resume his duties?

A After a while.

Q Was he temporarily replaced while he was sick?

A It wasn't temporary, no, because this man was transferred there as a housekeeper.

Q Did you tell the Board that Mr. Lebowitz was temporarily replaced by Mr. Workman?

A No, I don't recall that.

Q I ask you to read your statement again.

A He had worked out temporarily, but it wasn't

temporary in the beginning and it wasn't meant to be temporary.

Q Did you tell the Board that Mr. Lebowitz was temporarily replaced by Mr. Workman?

MR. KARASSIK: Now, I think she's just clarified --

BY MR. COFFEY:

Q Yes or no.

MR. KARASSIK: Excuse me, sir.

I have an objection pending.

MR. COFFEY: I'm sorry.

MR. KARASSIK: I think she has already clarified that answer.

I don't think she need be badgered further.

JUDGE DIXON: Well, I'll have to have it again.

What --

BY MR. COFFEY:

Q Did you tell the Board that Mr. Lebowitz was temporarily replaced by Mr. Workman?

A It turned out it was.

But when Mr. Workman was hired there, was transferred there, it was for a permanent job.

Q Did you tell Mr. Liebowitz -- did you tell the Board that Mr. Lebowitz was temporarily employed by --

A Say that again.

Q Did you tell the Board that Mr. Lebowitz was

JUDGE DIXON: It's a meeting that -- I understand what it is.

MR. KARASSIK: Mr. Coffey, you just need not accept my stipulation and you can put in anything you want.

MR. COFFEY: All right.

MR. KARASSIK; Assuming his Honor will accept it.

JUDGE DIXON: Yes.

MR. COFFEY: I'll accept the stipulation.

No further questions of this witness.

MR. KAYSER: Not by me.

MR. ENGELHARD: No questions.

RECROSS-EXAMINATION

BY MR. KARASSIK:

Q Miss Watkins, this whole business about Mr. Lebowitz being a housekeeper, when did he --what period of time did he serve as a housekeeper?

A When Cycle took over at Queens Nassau Nursing Home, Mr. Lebowitz was working -- was acting as housekeeper.

He did so until Cycle hired someone.

Q You didn't have anybody available to act as housekeeper at that particular time --

A At that particular time --

Q Is that correct?

A -- no, correct.

Q Was that part of your understanding with the Queens Nassau Nursing Home that until you could bring in your own housekeeper, Mr. Lebowitz would continue --

A Would continue --

Q -- to act as housekeeper?

A Yes.

Q Do you know what function or job Mr. Lebowitz assumed when you did get your own housekeeper?

A He was -- I mean, he was -- how would you say it?

He was an assistant administrator then, and he was all over the place then in every department.

Q I see.

He no longer acted on your behalf as housekeeper? Did he?

A No.

Q Did he act as housekeeper at all after you had brought your own person in?

A As I said, say, in the case of Mr. Workman, there was a --

Q There was a sick ness involved for a period of time?

A Yes, right.

Q He took over again until the replacement came in?

A Right, we brought Mr. Workman in.

Then it was when Mr. Lebowitz came back, I would say,

from my personal observations, there was a personality problem there.

We pulled Mr. Workman out.

Mr. Lebowitz again was acting as housekeeper, until we got in -- I think the next one was Mr. Mintz.

Q Did any of this happen after January of '74?

A Yes, I would say so.

Q When did you get it all straightened out so that Mr. Lebowitz did no longer act as housekeeper?

A When he was -- when he was made assistant administrator.

Q Do you know when that was?

A No, I don't.

Q Are you familiar with the in-service educational requirements of the -- May of '74 would be the State Hospital Code?

A Yes.

Q Are you familiar with those?

A Yes.

Q What can you tell us with respect to the requirments for attending in-service meetings relating specifically to Infectious Diseases?

A Well, in my case, I went because I wanted information -- I was taught in-service training programs -- I taught in-service training programs to all of the nursing homes that Cycle serviced to Cycle employees.

From time to time I would go into the different nursing homes, maybe the nurses were having a meeting.

If I was able to, I would sit in on some of their meetings.

In times, maybe an assistant administrator would sit in on some of the in-services that I was teaching in housekeeping.

The fact that we were all working together, it made it better that one knew what the other one was doing, you know, like, with reference to Infectious Diseases, Safety Committees and so forth.

Q So fire and safety are also topics of these in-service committee meetings?

A Oh, yes.

Q Now, am I correct in assuming that Infectious Diseases is one that is easily transferred from one patient or one person to another?

A Yes.

It's a difference in the cleaning that has to be administered during these times.

Q Do the porter and janitorial services have a direct impact on that kind of a situation?

A Oh, yes.

Q And it's important then for you not only to keep up

with the latest information in the field but to convey it to your --

A Right.

Q -- employees as well; is that correct?

A Yes, it is.

MR. KARASSIK: I have nothing further.

MR. COFFEY: Anybody else?

MR. KAYSER: No.

MR. ENGELHARD: No.

REDIRECT EXAMINATION

BY MR. COFFEY: (Cont.)

Q What was the personality problem that Mr. Workman had at Queens Nassau Nursing Home?

MR. KARASSIK: Objection, your Honor, as being immaterial.

JUDGE DIXON: What's the materiality?

MR. COFFEY: We want to know if Queens Nassau Nursing Home had any input in his being taken out of there.

JUDGE DIXON: Well, I thought the testimony was that it had some input in it.

MR. COFFEY: Not as to Mr. Workman.

JUDGE DIXON: Well --

MR. KARASSIK: The law onthe subject, your Honor, relates to dominating, supervision and exclusive

disciplinary authority.

The fact that there are inputs of any type and extent is not a controlling factor in this case.

Obviously they are working closely.

MR. COFFEY: You bet.

MR. KARASSIK: We don't dispute they are working closely.

MR. COFFEY: We think it's an aspect of economic reality that these people have to work very closely together as part of our allegation of joint employer.

JUDGE DIXON: Go ahead and ask your question.

BY MR. COFFEY:

Q What was the personality problem that Mr. Workman had a t the nursing home?

A Mr. Workman was a housekeeper at another place, as I stated before, and we transferred him to Queens Nassau Nursing Home.

Now, he believed in certain, say, cleaning techniques or what-have-you that Mr. Lebowitz at the time didn't have knowledge of.

It kind of conflicted.

Say, for instance, Mr. Lebowitz seemed to have felt that a housekeeper should have just supervised, and Mr. Workman, of the place that he was from, if he was short a man, he would go up and buff a floor, mop a

floor or what-have-you, like that.

These are things that he did which -- you know.

Q I don't know.

Which what?

A Which, you know, say caused a bit of, you know, as I said, personality clashes.

Q Between who and who?

Mr. Workman and Mr. Lebowitz?

A And the nurses and -- you know.

Q I don't know.

A And other department heads.

Q Other department heads?

A Yes.

Q You mean department heads of Queens Nassau Nursing Home?

A Yes.

Q And Mr. Workman?

A Yes.

Q They were at odds with each other?

A Yes.

Q I see.

How did that result in his transfer?

A Well, he asked to be transferred.

Q Did any department heads from Queens Nassau Nursing Home complain to the management of Queens Nassau

Nursing Home about Mr. Workman?

A Say, like, when they would need linen upstairs, you know, maybe Mr. Workman was upstairs working directly with a porter.

A nurse would need linen or a porter might come downstairs needing supplies that was kept locked up.

You know, this caused the porter or the maid to lose time to find Mr. Workman while he was upstairs working.

Mr. Lebowitz felt that, you know, if he rotated -- you know, if he roamed the area, the place, he would, you know, not -- people would not have to lose their time.

Q Did he make that clear to you, that is, Mr. Lebowitz?

Did he tell you that?

A Yes.

Maybe not those exact words but something to that effect.

Q What was your reaction to these statements by Mr. Lebowitz?

A I agreed with him, and I spoke with Mr. Workman about it.

Q And what did you tell Mr. Workman?

A I asked him, you know, to supervise and so forth, but to check the floors more often than what he was doing.

Q And was it at that point that Mr. Workman asked for a transfer?

A Many such incidents, you know, of that nature or near that nature happened.

He says that, you know, he felt he couldn't work that way and he wanted to be transferred.

Q And after he was gone, Mr. Lebowitz assumed Mr. Workman's duties?

A I think Mr. Mintz came in.

I'm not sure.

I can't say for sure who the next one was.

I believe the next one was Mr. Mintz.

I'm really not sure.

Q Now, did --

MR. KAYSER: Your Honor, I object on the grounds of materiality.

MR. COFFEY: We just want --

JUDGE DIXON: Haven't we been over this about a dozen times now?

MR. COFFEY: Yes, but she is changing her statement.

JUDGE DIXON: Oh, well, I'm going to sustain the objection to anymore of this.

BY MR. COFFEY:

Q Now, you say the administrator and the assistant administrator sat in on in-service training sessionsthat you conducted in the Home?

A From time to time at different places there and

JUDGE DIXON: Call your next witness, please.

MR. COFFEY: General Counsel calls Mr. Krakowski to the stand under Rule 43B, your Honor.

JUDGE DIXON: All right.

Whereupon,

AL KRAKOWSKI,

was called as a witness for the General Counsel, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q What's your full name?

A Al Krakowski.

Q What's your home address?

A 61-20 Grand Central Parkway, Forest Hills, New York.

Q Would you state your position at Queens Nassau Nursing Home, Mr. Krakowski?

A Administrator.

Q How long have you been administrator?

A Since January of this year.

MR. COFFEY: Would you please mark this as General Counsel's Exhibit 15 for identification.

MR. KARASSIK: Your Honor, did we ever mark General Counsel's No. 13 from identification into evidence?

MR. ENGELHARD: No.

Q I subpoenaed them.

A I think Cycle has one.

JUDGE DIXON: We will take a five-minute recess at this time.

(Recess taken at 3:10 p.m.)

JUDGE DIXON: Back on the record.

BY MR. COFFEY:

Q So --

JUDGE DIXON: Are you going to offer those?

MR. COFFEY: Yes, I would offer General Counsel's Exhibit No. 15 for identification, into evidence.

JUDGE DIXON: Any objection?

MR. ENGELHARD: No objection.

MR. KARASSIK: No objection.

JUDGE DIXON: General Counsel's Exhibit No. 15 is received into evidence.

(Contract received into evidence as General Counsel's Exhibit No. 15.)

BY MR. COFFEY:

Q Who buys the supplies -- who buys the supplies used by Cycle to clean the home?

A Queens Nassau.

MR. ENGELHARD: I'm sorry?

JUDGE DIXON: Queens Nassau.

BY MR. COFFEY:

Q And who --

A Supplies?

Q Yes.

A Do you mean soaps, detergents, this kind of stuff?

Q I mean all supplies.

A For Cycle Cleaning?

Q Yes.

A Yes.

Q Queens Nassau?

A Yes.

Q And who for Queens Nassau does this?

A Mr. Lebowitz does the ordering.

Q Is there any other part to providing supplies except doing the ordering?

A Beg your pardon?

Q Who gives out supplies?

A The supervisor from Cycle Cleaning.

Q Who keeps the records of all supplies to be used?

A To be used?

Q Yes.

A Well, Mr. Lebowitz keeps them.

He has a storeroom.

From the storeroom, from the big storeroom, he gives them out for, let's say, a week's supply to be used.

They keep on replenishing.

Q Who gives -- who gives supplies to the supervisors of Cycle?

A As I said, Mr. Lebowitz has a storeroom, a large storeroom of supplies, all kinds of supplies.

From there he gives them out to the supervisor and he does it, let's say, for a week's times.

Q He has the supplies for cleaning and he has all other supplies in there, too?

A There are some other supplies, there, too, that are used in other departments.

Q Of the nursing home?

A Right.

Q What other departments?

A Kitchen.

Q He keeps the supplies for the kitchen?

A Some paper stuff, towels.

Q How about for the aids, does he keep the supplies for the aids?

A Some.

Q Does Queens Nassau Nursing Home supply the time cards for the porters and maids?

A They use the same type of time cards because we have the same --

Q Who supplies the time cards to the porters and maids?

A I was going to say we have the same clock.

Q Doesn't Queens Nassau supply them?

A I really don't pay attention to it.

I believe so.

They have to match with our time clock.

Q I refer you --

MR. KARASSIK: There is no need for a reference, your Honor.

The man has answered the question.

JUDGE DIXON: He said he believed so.

What more do you need?

MR. COFFEY: All right.

BY MR. COFFEY:

Q If a patient spills some food in a room or a hallway or in any other area, can a registered nurse in the employ of Queens Nassau Nursing Home tell the porter to clean up the area?

A Yes.

Q Does this happen as a matter of course on a regular basis?

A It happens, yes.

Q Can a porter be brought from another floor by the registered nurse to clean it up?

A Yes.

Q Even though it's not even his regular floor to work

on?

A I am not allowing a patient to break a hip because I'm not allowed to bring one porter from one floor to the other floor.

Q And the registered nurse will tell him?

A Yes.

Q Whose idea was it to put Queens Nassau Nursing Home on the name tags of the employees?

A Mine.

Q And do porters and maids all wear Queens Nassau Nursing Home name tags?

A Yes.

Q Do other employees in the home wear Queens Nassau Nursing Home name tags?

A The whole staff.

Q So for all intents and purposes, to the general public, if they came into the home and saw a porter or maid, they would see the maid with Queens Nassau Nursing Home name tags on?

A Because it's for our own good.

We must know whether any stranger comes in to steal something or maybe hurt somebody or whatever.

Q I see.

If someone comes to Queens Nassau Nursing Home to apply for a job as a porter or a maid, are there

occasions in which he will be given a Queens Nassau Nursing Home application card to sign?

A We have printed applications.

There's no Queens Nassau on it.

If it is about a porter's job or a maid's job, we direct him to the supervisor of the department, the housekeeping department.

Q Doesn't your application card say Queens Nassau Nursing Home Employment Policy is Based on Qualification and Competence only without Regard to Race, Creed --

A Yes.

Q -- Color or National Origin or Sex?

A These are requirements by Title 6 of the U.S. Code.

Q But it contains the name Queens Nassau Nursing Home on that?

A A stamp.

I ordered a stamp for that purpose.

Q And they're on those applications?

A Right.

Q I see.

Does the home require -- does Queens Nassau Nursing Home require Cycle Cleaning hold in-service training on the premises?

A Yes.

A No, I did not negotiate this contract.

Q I see.

Now, Mr. Krakowski, you stated that all of the employees of your nursing home are required to wear tags.

A Right.

Q Is that correct?

A Right.

Q Is that correct?

A Right.

Q Are the employees of Cycle Cleaning, Company, Mr. Krakowski, required to wear any other identifying feature in addition to the tags?

A They wear uniforms and the Cycle is embroidered on the uniform.

Q And are there uniforms distinctive in any way?

A They are of blue color, I believe.

Q And written or embroidered --

A And embroidered with red letters over here.

Q And they are required to wear that embroidery in addition to the tag?

A This is on the uniform itself, it's embroidered on the cloth, in the fabric.

Q Would it be a fair statement then to say that all of the porters and maids working at the Queens Nassau

Nursing Home have the word Cycle embroidered on their uniform?

A I would say so.

Q Do you know who owns the Queens Nassau Nursing Home?

A Dr. Gershman.

Q Do you know who are the owners of the Cycle Cleaning Corporation?

A Mr. Larry Roth.

Q Is there any common ownership that you know of that exists between the Queens Nassau Nursing Home and the Cycle Cleaning Corporation?

A Not that I know of.

Q Are any of the officers, directors or stockholders of Cycle Cleaning Corporation, to your knowledge, have any interest or hold any office in Queens Nassau Nursing Home?

A Not that I know of.

Q Is the accounting system that you employ in your facility in any way utilized jointly or in conjunction with that of the Cycle Cleaning Corporation?

A Not at all.

Q Do you have any profit-sharing plan or insurance plans or any other compensation plans which would reward or compensate employees of Cycle Corporation?

A No.

Q Are your offices the same as the offices of Cycle Cleaning Corporation?

A No.

Q Where do they maintain their offices, to the best of your information?

A Somewhere in Flushing, I believe.

Q Queens?

A Yes.

Q Now, in addition to a sign-in book, Mr. Krakowski, are your employees required to punch in?

A Right, yes.

Q Is the punch in a -- to obtain a reading from a time clock?

A Yes.

It shows the hours when one checks in for work and the hours when one checks out from work.

Q So they punch in and --

A Out.

Q -- punch out?

A This determines the number of hours worked daily.

Q And they also sign in?

A They also sign in in the book, yes, because --

Q Well, never mind because.

A All right.

Q Mr. Krakowski, you'll have to allow me to finish my sentence because the Reporter can't put your answer down while I'm still talking.

A Okay.

Q Now, who takes physical possession of the punch-in cards for Cycle employees?

A One of the supervisors comes in on Monday mornings usually to pick up the cards and take them back to their offices.

Q One of whose supervisors?

A Cycle's.

Q And they physically remove the punch-in cards?

A They take them together and they take them back to their offices.

Q Are you required by provision of the State Hospital Code based upon your experience as an administrator to maintain a sign-in/sign-out book on the premises?

A Well, in New York, yes.

Outside of New York City, I didn't have it.

Q Do you provide job descriptions to your nursing staff, your maintenance staff, your dietary staff?

A Yes.

Q And are those --

MR. COFFEY: Objection, your Honor.

This is outside the scope of direct.

MR. KARASSIK: The real question raised by esteem

counsel deals with joint employers.

JUDGE DIXON: Overruled.

MR. KARASSIK: Now, I'm talking about the lack of a labor relations policy in general.

JUDGE DIXON: Overruled.

MR. COFFEY: If he wants to go into this, why doesn't he go inot it on his own?

MR. KARASSIK: You brought up the issue of joint employers.

MR. COFFEY: I went into --

JUDGE DIXON: Your objection is overruled.

go ahead.

BY MR. KARASSIK:

Q You formulate your own job descriptions?

A Right.

Q Does Cycle play any part inthe formulation of your job descriptions?

A No.

Q Do you play any part in the formulation --

A No.

Q -- of Cycle's job descriptions?

A No.

Q And when I say "you," would your answers be the same if you were to include in you any of the supervisory employees of Queens Nassau Nursing Home?

A Yes.

Q Your answer would be the same?

A Right.

MR. COFFEY: Would you repeat that question and answer again, please?

MR. KARASSIK: Would you read it back, please?

(Record read.)

MR. COFFEY: Thank you.

BY MR. KARASSIK:

Q When employees -- you testified, I believe, that when employees come in for jobs as porters and maids, that you have upon occasion given them application forms.

Is that correct?

A Yes.

Normally, if there is a supervisor of Cycle present, they would be directed directly to them.

Otherwise, we would accept an applicationand then turn it over to Cycle.

Q So you physically turn the application over to Cycle?

A We don't do --

Q Mr. Krakowski, please.

A I'm sorry.

Q You physically turn the application over to a supervisory employee of Cycle Cleaning Company?

A Yes.

MR. KARASSIK: I have no further cross, your Honor.

I reserve the right to recall Mr. Krakowski for direct examination with respect to other matters.

JUDGE DIXON: Yes.

MR. ENGELHARD: I have no questions of this witness, your Honor.

MR. KAYSER: No questions, your Honor.

JUDGE DIXON: Mr. Coffey?

MR. COFFEY: How long are we going to go today?

JUDGE DIXON: I don't know.

MR. COFFEY: I could --

MR. KARASSIK: May it please the Court?

JUDGE DIXON: Do you have any more questions of this man?

MR. COFFEY: No, your Honor.

JUDGE DIXON: You may step down.

(Witness excused.)

MR. KARASSIK: May it please the Court?

JUDGE DIXON: Yes.

MR. KARASSIK: In the testimony today, it was elicited that a receptionist was privy to a certain transaction between Mr. Morales and then Mr. "K".

I have contacted that receptionist, as identified by mr. Morales.

MR. KARASSIK: Unless we use every available opportunity, I don't know.

MR. COFFEY: We can go through lunch, your Honor.

MR. KAYSER: Counsel for Cycle is willing to press on as long as possible in the interest of trying to get through by the end of this week.

JUDGE DIXON: I would like to finish this case this week.

MR. COFFEY: We will go as lony as you want to, your Honor.

JUDGE DIXON: Of course, we have a Reporter to consider, too, your Honor.

MR. COFFEY: You want me to call an 8 (3) now, your Honor, or --

JUDGE DIXON: Let's just keep working.

MR. COFFEY: Okay.

General counsel calls Mr. Lebowitz to the stand. Whereupon,

MORRIS LEBOWITZ,

was called as a witness herein, by the General Counsel, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COFFEY:

Q What is your full name?

A Morris Lebowitz.

Q What's your home address?

A 1422 48th Street, Brooklyn, New York.

Q Mr. Lebowitz, you're the assistant administrator at Queens Nassau Nursing Home?

A At the present time.

MR. COFFEY: May we go off the record, your Honor?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

MR. COFFEY: In an off-the-record discussion, counsel for the respondent, Queens Nassau Nursing Home, has agreed to stipulate that Mr. Lebowitz is a supervisor within the meaning of the Act.

MR. KARASSIK: So stipulated.

MR. ENGELHARD: So stipulated.

MR. KAYSER: Agreed.

JUDGE DIXON: All right.

BY MR. COFFEY:

Q And how long have you been an assistant administrator, Mr. Lebowitz?

A Since January '74.

Q Is it a correct statement to say that from about August of 1973 to about January of 1974 you were a housekeeper at Queens Nassau Nursing Home?

A Correct.

Q And you had, as a housekeeper, supervised porters and maids?

A Right.

Q Now, if you had a complaint about how a porter was doing work, would you -- could you speak directly to him?

A Yes.

Q And even after you became an assistant administrator, Mr. Lebowitz, did you speak directly to porters?

A No.

Q You never --

MR. COFFEY: With your indulgence, your Honor.

BY MR. COFFEY:

Q Even after you became assistant administrator, would you still ask porters to empty garbage and things like this?

A It happens, but--

Q You have?

A It happens.

Q Would you tell them to mop floors?

A Not to mop floors, but, e.g., if he didn't do his

job, finish his job, so I told himhe should take out the garbage or something.

Q How did Mr. Klein get his job as a housekeeper?

A I recommended him.

Q Now, didn't you know Klein was looking for a job before --

A Yes.

Q -- Cycle Cleaning ever knew anything about him?

A Yes, I knew he was looking for a job; yes.

Q And didn't you tell him that he could have the housekeeping job?

A No.

I just recommended him.

Q You just recommended him?

A That's correct.

Q I see.

Isn't it true that you advised him of the housekeeper's position and that he could have the job?

A No.

Q Did you tell the Board that you advised him of the housekeeper's position and that he could have the job?

A I don't think so.

Q Well, I refer you --

A I don't think so.

Q -- to your statement (handing).

A Over here (indicating)?

Q Yes.

A Yes, if he would be accepted.

MR. ENGELHARD: If your Honor please, may I recommend that that be marked for identification?

BY MR. COFFEY:

Q Now, after reading your statement --

JUDGE DIXON: You better mark it for identification, Mr. Coffey.

MR. COFFEY: As General Counsel's Exhibit No. 16?

JUDGE DIXON: Yes.

MR. COFFEY: Would you please mark this as General Counsel's No. 16 for identification.

(Statement so marked for identification as General Counsel's Exhibit No. 16.)

BY MR. COFFEY:

Q Isn't it true that you told him he could have the job before he spoke to anyone from Cycle?

A No.

Q You didn't tell this to the Board?

A No.

I --

Q Didn't you tell the Board that only after Klein -- after you Klein he could have the position did you call Roth and advise him that you had hired a man for the

new position?

A No, I never hired anybody.

Q I refer you to your statement again.

Please read this portion (handing).

Does that refresh your recollection?

A It looks like.

Q It looks like?

A Yes.

Q Now, isn't it true that only after you told Klein he could have the position, did you call Roth and advise him that you had hired a man for the new position, for the position?

A Well --

Q Isn't that the truth?

A -- remembered I spoke first that I just told Klein he could get the job if he's -- he can have the job if he's going to be accepted by Mr. Roth.

Q Did you tell Klein he could have the job before you spoke to Mr. Roth?

A Not that --

MR. KARASSIK: He's already answered the question.

A Not that he's going to get the job.

Q Did you tell the Board t-at you told Klein he could have the job before you talked to Roth?

MR. KARASSIK: That's three times the same question has been asked.

He said if he was accepted.

I think that's conclusive.

MR. COFFEY: I don't think it's conclusive at all, your Honor.

JUDGE DIXON: I don't know what you have in your statement.

I'm in the dark on that.

MR. COFFEY: all right.

JUDGE DIXON: I would prefer that you read out, with the aid of counsel, what you want.

BY MR. COFFEY:

Q Did you tell the Board the following:

"I knew Klein was looking for a job and I advised him of the housekeeper's position and that he could have the job. Only after I told Klein he could have the position did I call Roth and advised him I hired a man for the position."

Now, did you tell that to the Board?

A No, I didn't hear Klein.

I had no authority to hire Klein.

Q Yes or no, did you say that to --

JUDGE DIXON: Why don't you find out if that's his statement?

Get his statement identified and put it in the evidence, Mr. Coffey.

Get his testimony now.

If you have some --

BY MR. COFFEY:

Q Is this your signature here?

A Yes, that's my signature.

Q You read it before you signed it?

A Yes.

JUDGE DIXON: Give him a chance to explain it, and then drop it.

MR. COFFEY: Yes, your Honor.

BY MR. COFFEY:

Q And you made the statement in the statement that -- and you made the -- scratch that.

Did you read every bit of this statement when you gave it, Mr. Lebowitz?

A Yes.

Q And you were -- and did you tell the Board agent -- did you read that part when you signed it?

Did you read page 2?

A Well, I actually didn't read it, she read it to me.

Q She read it to you?

A Yes.

Q And did you hear her read it?

A Right.

Q And you -- strike that.

MR. COFFEY: General Counsel offers Counsel's Exhibit No. 16 for identification, into evidence at this time, your Honor.

JUDGE DIXON: Any objection?

MR. KARASSIK: No objection.

MR. COFFEY: For the limited purpose of paragraph --

MR. KARASSIK: Now, I have an objection, your Honor.

He either offers the whole thing or he doesn't offer anything.

JUDGE DIXON: If you're going to offer it, you'll have to offer the whole thing.

MR. COFFEY: I'm going to offer the whole thing.

JUDGE DIXON: Any objection?

MR. KARASSIK: No objection.

MR. ENGELHARD: No objection.

MR. KAYSER: No objection.

JUDGE DIXON: All right.

General Counsel's Exhibit No. 16 is received in evidence.

(Statement previously marked as General Counsel's Exhibit 16 for identification, now received in evidence.)

Q When you called Mr. Roth, was that before or after you told Klein he had the job?

A I --

MR. KARASSIK: Excuse me.

I object to the question.

JUDGE DIXON: It just assumes a statement the witness wasn't prepared to make.

JUDGE DIXON: I thought this was covered in the --

MR. COFFEY: I think I want to go further with it, Your Honor.

I have more testimony to elicit.

JUDGE DIXON: All right.

Go ahead.

A Would you like to repeat the question?

MR. KARASSIK: I object to the form of the question,your Honor.

It incorporates a state of facts not demonstrated by the evidence.

MR. COFFEY: All right.

BY MR. COFFEY:

Q When did you call Mr. Roth?

A I called Mr. Roth when I spoke to Mr. Klein, he should come for an interview.

Q Come to -- for an interview with you?

A With Mr. Roth.

Q And what did you say to Mr. Roth?

A That I recommend this man, I know that he is going to be all right for the job.

Q Did you have any discussion about salary?

A With whom?

Q With Mr. Roth.

A No.

Q You didn't tell Klein that he would be making a hundred and fifty dollars a week?

MR. ENGELHARD: Wait a minute.

MR. KARASSIK: Objection.

MR. ENGELHARD: Objection.

MR. KARASSIK: He asked if he had a conversation with Roth and then he quotes a conversation with Klein.

JUDGE DIXON: Well --

BY MR. COFFEY:

Q Did Mr. Roth tell youthat Mr. Klein would be making $150 a week?

A No, Mr.Roth didn't tell me anything.

Q He didn't?

A No.

Q Isn't it true that it was only after Klein reported for work that he was seen by Roth and Watkins?

You never said that to the Board?

A That would happen at the same day when he started to

work, the same day he was interviewed; that's possible.

Q Interviewed by whom?

A By Mr. Roth and maybe -- I think Mr. Watkins was there, too.

I think Mrs. Watkins, not even Mr. Roth; Mrs. Watkins was there.

Q I refer you to your statement.

MR. KARASSIK: I thought we had decided that he would read the statement.

JUDGE DIXON: Read it out loud.

BY MR. COFFEY:

Q Didn't you say in your statement that "After Klein reported to work at the Home, he was first seen by Roth and/or Watkins"?

A Yes, right.

Q Okay.

MR. COFFEY: I have no more questions of this witness at this time, your Honor, but I might want to call him on rebuttal.

JUDGE DIXON: Well, we'll face that when we get there.

MR. COFFEY: Okay.

Would you instruct him to make himself available to us if we go over till tomorrow, your Honor?

JUDGE DIXON: Yes.

Do you have him under subpoena?

Mr. COFFEY: Yes, your Honor.

JUDGE DIXON: Well, will you be here tomorrow, Mr. Lebowitz?

THE WITNESS: But only until 2:00 o'clock.

MR. KARASSIK: He has a religious conviction.

JUDGE DIXON: All right.

MR. COFFEY: Okay.

No further questions at this time.

CROSS-EXAMINATION

BY MR. KARASSIK:

Q Mr. Lebowitz, with what language are you most familiar?

A Czechoslovakian.

Q And what newspaper doyou read for the most part?

A English.

MR. ENGELHARD: What?

THE WITNESS: English.

BY MR. KARASSIK:

Q And when you prepared this statement, did you, yourself, read it over?

A No.

Q It was read to you?

A Yes, that's correct.

Q Where did this take place?

A In my office.

Q Did you -- did you in fact hire Mr. Klein?

A No.

Q Did you in fact set Mr. Klein's salary?

A No.

Q And prior to Mr. Klein's employment, by Cycle Cleaning, to your knowledge, Mr. Lebowitz, was he interviewed by a representative or representatives of Cycle Cleaning Company?

A I don't think so.

Q That's before he came to work that they hadn't spoken to him?

A No.

Q Did they -- well, how is it that he then came on to the job?

A I recommended -- I knew that he was looking for a job.

I spoke -- I told him that he should come in Monday, there's going to be there Mrs. Watkins and Mr. Roth.

I told him that they will speak to him.

Q What day of the week was this?

A I spoke to him a week before, the Friday or Saturday.

He came in on that Monday.

Q And Watkins and Roth weren't there at that time?

A On Friday and Saturday, no.

Q And were Watkins and Roth there Saturday?

A No.

I wasn't there either Saturday.

I mean, this was at home.

Q And on Sunday, were Watkins and Roth there?

A No.

Q Was the first day after you spoke to them that Watkins and Roth were available the Monday?

A I remember not for sure whether it was Mr. Roth and Mrs. Watkins.

I think it was Mrs. Watkins.

Q One of the Cycle management people?

A Yes.

Q So the first time that management personnel from Cycle had an opportunity to talk with Mr. Klein was the first work day -- I'm sorry, you have a seven-day-a week job -- was on Monday; is that correct?

A On Monday, yes.

Q And when was Mr. Klein hired?

A February or something like that.

I'm not sure.

MR. KARASSIK: I have no further questions.

MR. COFFEY: Mr. Engelhard isn't here at the

Whereupon,

ROBERT ORTIZ.

called as a witness, having been first duly sworn, was examined and testified, on his oath, as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) What is your full name, please?

A Robert Ortiz.

Q What is your home address, Mr. Ortiz?

A 407 Beach 67th Street, Rockaway Beach, New York.

Q Mr. Ortiz, when were you hired by Queens-Nassau Nursing Home?

A I was hired in July of 1973.

Q And who hired you?

A Mr. Lebowitz.

Q Who was he, at the time, Mr. Ortiz?

What was his position?

A He was the housekeeper there.

Q And what were you hired as?

A I was a porter.

Q And at the time you were hired were you told anything?

A Yes.

Q What?

A If I do my job good, I would become head porter.

Q And did you ever become head porter?

Q And did you ever become head porter?

A Yes, sir.

Q When was that?

A In September.

Q Of 1973?

A Yes.

Q Did you get a raise at that time?

A Yes, I did.

Q How much did you get?

A A ten dollar raise.

Q I see.

As head porter, Mr. Ortiz, what were your duties?

A To give out the linen, make sure the porters go to the floor, go on the floor, especially on Saturday, I run the place Saturday, you know, like, Mr. Lebowitz is not in on Saturday because he is Jewish, and I, you know,make sure the porters come in to work at four o'clock.

If they are not then in, I got to stay there or get another porter.

Q How do you get another porter?

A I call up.

Q So you are like a head man then?

A Yes.

Q Now did anything happen in October and November of

1973 in relation to who paidyou?

A Yes.

Cycle came in.

Q And up until Cycle came in, who was paying you?

A Queens-Nassau.

Q And when did Cycle come in?

A I think October or November.

Q And what happened at that time in regard to that?

A Mr. Lebowitz told us that we would be getting paid by Cycle.

Q Mr. Lebowitz told who?

A Told the porters.

Q I see.

When was that?

A November or October, I'm not sure which month it was.

Q Where was it that he told you that the porters--

A In the basement, downstairs in the basement.

Q There was a meeting?

A Yes.

Q I see.

What else did he say at that time?

A If we have a problem, come to him or to the housekeeper, you knew, to the supervisor.

Q Did he say who the new spervisor would be?

A Yes.

Q Who?

A Mrs. Watkins. He introduced us to Mrs. Watkins.

Q Now, in October of 1973, did you have any contact with any union?

A Yes.

I seen Mr. Morales.

Q Where did you see him?

A Outside.

Q Outside what?

A Outside the building.

Q What building?

A Queens-Nassau.

Q Queens-Nassau Nuraing Home?

A Yes.

Q When you first saw Mr. Mofales, what happened at that time?

A I was talking with him and he was telling me about the union.

He gave me some cards to give out to the employees. So I gaveout the cards to the employees during my breaks, my lunch hours, after work. I told people about the union.

Q How many cards did you give out?

A I'd say around twenty cards.

Q Can you remember some of the people you gave cards to?

A Yes.

I gave cards to Morris Wilkinson, Dennis Perez, Joe Dunbar; in the kitchen, Stanley.

Q And you gave these cards-- Did you give any of these cards back to Mr. Morales?

A Yes, I did.

Q Now, how many times did you talk to Morales in October?

A Quite a few times, five--three or four times.

Q Where did you talk to him?

A Outside the building. He might have called me up in my house because he had my phone number.

Q Did you talk to him outside the building?

A Yes.

Q On your return to the building on any occasion, did you have a conversation with anyone?

A Yes, I did.

Q With whom?

A Mr. Lebowitz.

Q When was this?

A One day I was coming in, I had just seen Mr. Morales outside. He was coming in and I had these cards in my hands.

Mr. Lebowitz said, "What is this?"

I said, "These are the union cards."

He asked me to look at one. I gave him a card. He looked at it, and he gave it back to me. That's what happened then, at that time.

Q I see.

Did the cards that you gave Mr. Lebowitz--strike that.

Did you tell Mr. Lebowitz what union the cards were from?

A Yes.

Q And what union did you say?

A 1115.

Q Did the cards say 11--

A Yes.

Q -- 15 on them?

A Yes.

Q Now I direct your attention to April of 1974.

Did you attend a meeting?

A Yes, I did.

Q During April?

A Yes.

Q How did you find out about the meeting?

A There was a sign posted in the employees' dining room saying that there is going to be a meeting. They sent us

a letter in the mail saying that there's going to be a meeting in the bar.

Q Who sent you the letter?

A 144.

Q And did the sign posted in thedining room say that Lofal 144 was going to have a meeting?

A Yes.

Q Now what was your shift at that time?

A 8:00 to 4:00.

Q 8:00 a.m., to 4:00 p.m.?

A Yes.

Q What time was the meeting posted to be?

A Three o'clock.

Q Did you have to ask permission--

A Yes.

Q -- to leave?

A Yes, I did; I asked permission.

Q Who did you ask?

A I'm not sure. With so many housekeepers, I think it was Mr. Klein or Mr. Mintz.

Q And what did you ask the housekeeper?

A Could we attend the meeting.

Q When did you ask that of whoever the housekeeper was?

A It was around two o'clock.

Q Was that on the same day of the meeting?

CSA Reporting

A Yes.

Q And what did Mr. Mintz say to you?

A He said he got to ask permission.

Q Did he say who he had to ask permission of?

A I'm not sure-- I'm not sure, but I think it was Mrs. Watkins or Mr. Lebowitz.

Q And when the housekeeper came back, whether it was Mr. Klein or Mr. Mintz, what did he say to you?

A He said, "We can attend the meeting but we are not going to get paid for the hour.

Q Did you attend the meeting?

A Yes, I did.

Q Who was present at this meeting?

A Mrs. Allen, Mr. Goodman and another fellow from Local 144, but I don't know his name, and Mrs. Watkins.

Q Mrs. Watkins, the supervisor from Cycle Cleaning?

A Yes.

Q And did Mrs. Allen introduce Mrs. Watkins at the meeting?

A Yes, she did.

Q And I direct your attention now to April of 1974 again.

Did you have any more contact with Mr. Morales at that time?

A Yes, I did. During April, he gave me more cards to give out. There were new employees there, you know, coming in, and I gave them out to the new employees.

Q Do you remember any of the cards you gave out to any people you gave cards to at that time?

A I gave Dennis Perez, Morris Wilkinson, again, Thomas Amaro, Thomas McKethen; in the kitchen, employees from the kitchen.

Nurses' aides, orderlies.

Q I direct your attention to May of 1974. Was there an occasion in May of 1974 when you were buffing in the lobby?

A Yes, I did.

Q Did anything happen at that time?

THE WITNESS: Excuse me?

Q Did anything happen at that time?

A Yes.

Q Tell us about that.

A One day I was buffing the floor. Mr. Morales tried to come in the building to see me but he got stopped by this nurse, Mrs. Wield.

Q She is a registered nurse?

A Of supervisors.

She told him that he can't come in the building.

Mr. Morales said, "All right."

Then he walked out right back out.

Q Again during May of 1974, did Mr. Morales ever come to you and ask you any questions concerning a lady with blond hair?

A Yes, he did.

Q What was the question he asked you and--

A Who was that lady that was-- It was some lady from Cycle with blond hair.

I said, "I know her by her name Judy."

MR. COFFEY: Could I have a second, your Honor?

Off the record?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

Q (By Mr. Coffey) This Judy, is her last name Hensley?

A Yes.

Q And--

MR. KARASSIK: Your Honor, the witness has already testified that he knows this woman only as Judy, and the words are being put into his mouth.

JUDGE DIXON: That's right.

MR. KARASSIK: I think we ought to have a direction that he shouldn't lead the witness in this kind of manner.

JUDGE DIXON: Well, counsel knows he shouldn't lead the witness, at least I assume he does.

Q (By Mr. Coffey) This Judy, what is her status with Cycle Cleaning?

A I think she is a supervisor.

MR. KAYSER: Objection.

MR. KLING: We should have some testimony with respect to her duties. That is a conclusion of the witness.

JUDGE DIXON: All right.

Go ahead.

MR. KAYSER: Because there was a questinn and answer, I would like to get the spelling right as to the question counsel put to the witness.

When you said Hensley; how is that spelled?

MR. COFFEY: We are not sure.

MR. KAYSER: Well, make a guess for the record, if you can.

Make a guesstimate of the spelling.

MR. COFFEY: I--I really couldn't.

MR. KAYSER: Okay. Continue.

MR.COFFEY: H-e-n-s-l-e-y, or something

like that.

Do you have a-- Off the record, again, your Honor?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

Q (By Mr. Coffey) Mr.--

MR. KARASSIK: Excuse me.

Your Honor, may the record note that counsel for Cycle Cleaning has declined to stipulate that they have a supervisor by the name of Judy Hensley.

JUDGE DIXON: All right.

That was in the off-the-record discussion, so it ought to be reflected.

Proceed.

Q (By Mr. Coffey) Now, I direct your attention again to May of 1974.

Did you attend a meeting of porters--

A Yes.

Q -- in the basement of Queens-Nassau Nursing Home?

A Yes.

Mrs. Watkins told me one day to get down with all of the porters, to come down to the

basement. She said if we vote for 115, she is going to change the whole crew around.

JUDGE DIXON: You mean 1115?

THE WITNESS: Yes; 1115.

JUDGE DIXON: All right.

Q (By Mr. Coffey) Now, Mr. Perez--

A Mr. Ortiz.

Q I'm sorry.

Now, Mr. Ortiz, following this meeting, did you have any further conversations with anyone?

A Yes.

Again I was by myself in the basement.

Q When was this?

A I think in May, the end of May, or June. It was two weeks before the election, I think it was.

Q What is that?

A Two weeks before the election.

Q What happened at that time?

A Mrs. Watkins stopped me again by myself. She said if I keep talking about the union she is going to fire me.

MR. KLIN: Who? Who is this?

Q (By Mr. Coffey) Did she say what union?

A 1115.

Q What were her words to you, to the best of your recollection?

CSA Reporting

A The best I can remember, she said that if I keep telling the boys about the union, she is going to fire me--1115.

MR. KARASSIK: Your Honor, may I have a continuing objection to this line of testimony as not being binding upon the Queens-Nassau Nursing Home.

JUDGE DIXON: Yes; all right.

BY MR. COFFEY:

Q I direct your attention to June 9, 1974.

A June 9, that was three days before the election; she called me up.

Q Who?

A Mrs. Watkins.

Q What did she say to you?

A She told me not to come in no more. I asked her why.

She said that I am a troublemaker because of 1115.

Q Do porters have lockers in Queens-Nassau Nursing Home?

A Yes, they do.

Q Are their lockers located near the lockers of the other employees?

A Yes.

Q Do they use the same locker room?

A Yes.

Q When you come in in the morning, Mr. Ortiz, what do you do?

A We punch our card and then we go to the sign book.

Q You do that?

A Yes .

Q Do all employees at Queens-Nassau Nursing Home do that?

A Yes.

Q Is there any particular sign-in book that you sign into?

A Yes.

Q What does that say on it?

A For housekeeping, or maintenance and for the lanndry.

Q Now, who signs into--do porters sign into that book?

A Yes.

Q Maids?

A Yes.

Q And maintenance men?

A Yes.

Q And the people who do the lanndry?

A Yes.

Q And who is paid by Cycle and who is paid by Queens-

Nassau Nursing Home of those?

A The porters are paid by Cycle.

The laundry and the maintenance men are paid by Queens-Nassau Nursing Home.

Q Who orders and gives out supplies?

JUDGE DIXON: Are you going into-- Is this examination going into--going to be directed to this question of the joint employership?

MR. COFFEY: Yes, your Honor.

JUDGE DIXON: I don't think we need any more testimony on that. I think we have the picture on that.

MR. COFFEY: He has several more things on it, your Honor, that have not been testified to before, some aspect of it.

JUDGE DIXON: Well-- All right. Let's hear what we have not heard before.

THE WITNESS: Could you repeat that question again?

Q Yes.

Who gives out--who gives out supplies to the porters?

A Sometimes the head porter, the housekeeper Mr. Lebowitz.

Q Directly to the porters?

A Yes, sir.

Q Are porters ever told to help maintenance people out?

A Yes.

Q Who--

JUDGE DIXON: Well, that's nothing new; we have had that time and again.

BY MR. COFFEY:

Q Who would direct them to help--

MR. KARASSIK: Your admonitions apparently have no affect on this person, your Honor.

MR. COFFEY: I think a new aspect will be brought out by this next question, your Honor.

JUDGE DIXON: Well, one more chance on this new stauff.

THE WITNESS: Go ahead.

Q Who tells porters to help maintenance men?

A Mr. Lebowitz.

JUDGE DIXON: I don't know whether that is new not, but it sounds to me like it is new.

BY MR. COFFEY:

Q Have you ever painted--

A Yes.

Q -- in the nursing home?

A Yes.

Q How many times.

Q Who checks out time cards?

A For the porters?

Q Yes.

A Mr. Lebowitz takes the time cards out first. He checks them out. Then he gives it to Cycle.

Q Have you ever been told to clean out the storage room for medicine?

A Yes.

MR. KARASSIK: I object to the question, your Honor.

The relevancy in point -- in time to this proceeding is completely lacking.

MR. KAYSER: Also, it is leading, also.

JUDGE DIXON: Well, I have had enough evidence on this question of this joint employer problem. I think--I think that we don't need any more on that.

MR. COFFEY: All right, your Honor.

I have no further questions.

MR. KAYSER: May we go off the record, your Honor?

MR. COFFEY: Oh, I have one further question.

JUDGE DIXON: All right.

FURTHER DIRECT EXAMINATION

Q (By Mr. Coffey) After your discharge, do you know

who replaced you as head porter?

A Excuse me ? I don't understand you.

Q After your discharge, do you know who replaced you as head porter?

A Dennis Perez.

MR. COFFEY: That is all I have, your Honor.

MR. KAYSER: May we go off the record.

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record.)

JUDGE DIXON: Back on the record.

We will take a 15-minute recess at this time while the attorneys read over the statement of this witness.

(Whereupon, a ten minute recess was taken.)

JUDGE DIXON: Back on the record.

Cross examine.

CROSS EXAMINATION

Q (By Mr. Kayser) Mr. Ortiz, when were you fired?

A June 9, 1974.

Q You testified Mrs. Watkins fired you?

A Yes.

Q How did you feel when you were fired?

me.

She was in the office, she saw me and she called me.

Q 'She" being whom?

A Mrs. Watkins.

Q Now, is this where you had the group meeting or is this where she spoke to you alone?

A She spoke alone with me then.

Q I'm interested in the meeting.

A With the group?

Q With the group.

A Oh.

Q Were there any employees of Queens-Nassau Nursing Home there --

A No.

Q -- other than porters?

A No.

Q The only people in that room were Cycle employees; is that correct?

A Yes.

MR. COFFEY: Objection, your Honor.

JUDGE DIXON: What for?

MR. COFFEY: The testimony --

JUDGE DIXON: Overruled.

Q (By Mr. Karassik) Now, your punch cards are

a shade of green.

Is that correct?

A Yes.

Q Were the cards of other employees different colors?

A Yes.

Q Do you recall, for example, the color for the maintenance people?

A I'm not sure.

MR. COFFEY: Objection, Your Honor.

A What color are they?

MR. COFFEY: We have been precluded from going into the joint-employer area to ask more questions on this, and I believe that this has -- and I believe that counsel is trying to make --

JUDGE DIXON: I don't think you need that, Mr. Karassik.

MR. KARASSIK; Well, the question of physically taking the cards out, it had come up andI wanted to --

JUDGE DIXON: Well, then I think the testimony is pretty clear, isn't it, that there are separate cards for Home employees and Cycle employees?

MR. KARASSIK; All right; fine.

JUDGE DIXON: I'll make that finding here and now.

SC3

For May 18th, he was two and three quarters hours late on Tuesday.

On May 23 -- 25th, he was two hours late on Tuesday and one day out.

On June 1st, he was one hour late on Wednesday.

Q (By Mr. Karassik) What time did you have to report to the methodone clinic?

A In the morning.

Q What time?

A 6:30.

Q 6:30?

A Yes.

Q And what time did you have to report for work?

A Eight o'clock.

Q Eight o'clock?

A Yes.

Q Now, Mr. Ortiz, when you were advised that you were discharged, did you discuss this matter with Mr. Lebowitz?

A My firing?

Q Yes.

A Yes, I did.

Q And when did that occur?

A I think the next day or that day.

Q And where did it occur?

SC4

A In his office.

Q And what did you say to him and what did he say to you?

A He asked me what happened, over the phone.

I told him that Mrs. Watkins told me not to come in because I am trouble maker for Local 1115.

Q What did he say to you?

A He said he couldn't do nothing.

Q Did he say it wasn't in his power to do anything?

A No.

Q Did he say that it was up to Cycle?

A I don't know. I don't remember what he said that day.

I know I said it to him.

Q Do you recall your earliest testimony, Mr. Ortiz, in which you said you told no one until the time you spoke to Diane Chait, that it was because you were a trouble maker for Local 1115 that you had been fired?

A I am not sure who I told, but I do remember telling Mr. Lebowitz.

Q Now you recall telling Mr. Lebowitz?

A Yes, that I got fired.

Q D o you recall making the statement to the representative of the Board?

"I then went in and spoke to Lebowitz. I asked Lebowitz about my vacation pay. He said he was sorry

SC5

about what happened to me, it wasn't in his power, it's Cycle. He said I had to speak to Roth, the head of Cycle, about my vacation. I then left."

Do you recall giving that statement?

A Yes.

Q Was that statement accurate at the time you gave it?

A Yes.

Q Do you recall now that you gave that statement?

A Yes.

Q And is it accurate today?

A Yes.

I had to ask him for my vacation pay. Everybody had to ask Mr. Lebowitz for vacation pay.

Q But he said you had to ask Mr. Roth, is that not so?

A Yes.

Q I see.

Now, after you were adivsed that Watkins was your supervisory, did she tell you that if you had any problems, that you should call her?

A Mr. Lebowitz or her.

Q Did she give you her home telephone number?

A It was on the board, yes.

Q Now, when you were working on Saturday, did you ever take it upon yourself to allow employees -- to allow

SC9

A I don't know.

Q Did you ever ask employees on your own to come into work if a porter was needed?

Did you ever ask --

MR. COFFEY: Please answer the previous question.

A No.

Q Did you ever ask an employee to come in on their days off --

A No.

Q -- after asking permission from Miss Watkins?

A I had to ask permission from Miss Watkins or Mr. Lebowitz.

Q Did you ever take it upon yourself from -- if you were short staffed, to temporarily transfer a porter from floor to floor?

A If I needed a porter on the floor?

Of course, I had to put a porter -- to take a porter from another floor.

Q And did -- and you did that, didn't you?

A Yes.

Q And you did that on your own, you didn't ask anybody about it if you thought it was needed; is that correct?

A I didn't have to ask nobody.

Q And when you asked employees to work overtime, would that be on any particular basis?

How would you decide who you would ask?

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A Yes.

Q And do you do it on a seniority basis?

A Yes.

Q And do you have to ask anybody's permission to do it on a seniority basis?

A Of course.

Q Whose?

A Mrs. Watkins and Mr. Lebowitz's.

Q Didn't Mrs. Watkins tell you you could authorize overtime?

A No.

Q Do you recall an incident in March of 1974 when the elevators were stuck?

A Yes.

Q And were you asked to send some porters to help pass out the food?

A Yes.

Q Who asked youto do that?

A The nurses.

Q And--

A The supervisor from the nurses.

Q The supervisor of the nurses?

A Yes.

Q What did you do when you received that request?

A I said I have to ask permission.

Q Whom did you have to ask permission of?

A I asked Miss Watkins because it was on a Saturday and Mr. Lebowitz was not there.

Mr. Lebowitz does not pick up the phone on Saturday.

Q I'm well aware of his habits.

But you had to ask permission of Miss Watkins --

A Yes.

Q -- to assign a porter to do passing out of food; is that correct?

A Yes.

Q Did you ever have occasion to ask Mr. Lebowitz for time off?

A Yes.

Q And what has he -- and what did he say to you on those occasions?

A If I needed a half a day off, he told me to go ahead, -- to go ahead and go off.

Q Is thatright?

A Yes.

Q He didn't call anybody or receive approval for that from anybody, did he?

A I don't know.

Q Do you remember making a statement to theeffect, "If I went to Lebowitz and asked him for time off, he

said he would call Cycle Cleaning and then advised me if I could have the time off."

Do you recall making that statement?

A Yes.

Q Was that true when you made it?

A Yes.

Q Was it -- is it true today?

A If he called Cycle, he probably did it.

Q Did you make that statement?

A Yes.

Q And when you asked Mr. Lebowitz for time off, he would tell you he would call Cycle and check it out?

A I guess so, yes.

Q Thank you.

Did you have a union form --

MR. COFFEY: Your Honor, we're still going into that area again.

I'm going to have to ask questions on redirect about this.

MR. KARASSIK; These are all different new matters.

I've never brought these things up before, Your Honor.

JUDGE DIXON: Go ahead.

Q (By Mr. Karassik) Did you have the word

"Cycle" written on one of your union forms?

A Not my union form, no.

Q You didn't have the word"Cycle" written on one of your union forms?

A No.

Q No?

A No.

Q How many union forms did youhave given to you?

A Two union forms.

Q Did one of them have the word "Cycle" on them?

A No.

Q Do you remember making this statement to the Board:

"Had two union forms given me in January, 1974 by Mr. Lebowitz, one had Cycle Cleaning written on it and another did not have any company name on the union form."

A It could have been Cycle on it. I'm not sure.

Q Do you remember making the statement?

A Yes.

Q Was it true at the time you made it?

A It must be true.

Q Did you ever hear Mr. Krakowski tell any 1115 agent, Morales or any other 1115 agent, he could not enter the Home or speak to employees?

supervisor?

MR. KARASSIK: No, sir.

JUDGE DIXON: Is anybody contending that?

MR. KONOWE: We asked before whether there would be a stipulation that he is not a supervisor.

I being Cycle declined to make such a stipulation.

JUDGE DIXON: IS that your position now?

MR. KAYSER: We are not contending he's a supervisor.

MR. KONOWE: Then I have no further questions.

JUDGE DIXON: Fine.

REDIRECT EXAMINATION

Q (By Mr. Coffey) Why did you go to Lebowitz about your vacation?

A Because Miss Watkins told me, ask Mr. Lebowitz if you would get your vacation pay.

That's why I went to him.

Q Now,during the entire time thatyou were at the nursing home, who gave you orders?

A Mr. Lebowitz and Mrs. Watkins.

Q That's from the time -- that's fromthe time you arrived until the end?

A Yes.

Q Was there a time when Mrs. Watkins wasn't there at all?

JUDGE DIXON: I received it in evidence.

MR. KARASSIK; In evidence?

JUDGE DIXON: Yes.

Mr. KARASSIK: I apologize.

MR. KAYSER: This letter is in evidence, but the letter that counsel is making the comparison to is not in evidence.

JUDGE DIXON: That's why he has the right to exam.

Q (By Mr. Coffey) And this letter, why did you get this letter?

A Because I know I gave Miss Watkins a letter like this. (indicating)

Q When did you give Miss Watkins a letter --

A In January.

Q -- like this?

A In January.

Q When you gae Miss Watkins the letter, did you also tell her that you were -- did you also tell her anything?

A Yes.

Q What did you tell her when you gave her the letter?

A She asked me to get a letter from my program; right.

Q Why did she ask you to get a letter from your program?

A I guess to give it to the boss.

MR. KARASSIK; I move to strike the answer, Your Honor, as being --

Q Did she say why --

MR. KARASSIK; I move to strike the answer.

JUDGE DIXON: Okay.

I'll strike the answer.

Q (By Mr. Coffey) Did she say why she wanted the letter?

A No.

Q What gave rise toher asking you for the letter?

What was the conversation between you and her that gave rise to her asking you for the letter?

A Because she found out I was in the program. So I told her the truth, yes, I'm in the program.

Q Had the conversation -- had the conversation with you anything to do with your latenesses?

A Yes.

Q Could you tell us what conversation took place?

A In January.

Q Yes. What was the conversations between you and Mrs. Watkins concerning the lateness?

sec/12

A I told her that I go to the program, to the methadone maintenance program, three times a week and I'm going to be late.

She said, "All right, as long as you be here."

Q Is that when she told you to get a letter?

A Yes.

Q And you did get a letter?

A Yes.

Q Now, there were several -- there were many times when you were late on occasions that weren't Mondays, Wednesdays and Fridays between January and June of 1974.

Do you know of any other reasons why you would have been late on Sundays and Saturdays and Tuesdays or whatever?

A Sundays and Saturdays?

Q Yes.

A Sometimes I could have been sick, not feeling good.

My brother-in-law, he died.

Q Did these occasions happen between January and June?

A Yes.

Q How many times were you sick, to your best recollection, between January and June of 1974?

CSA Reporting

A Maybe three or four times.

Q And --

MR. KARASSIK: How many times did your brother-in-law die?

MR. COFFEY: Your Honor, I object to this.

The record will show that his brother-in-law died only once, I'm sure.

No further questions about this, Your Honor.

JUDGE DIXON: All right.

MR. KAYSER: No questions.

RECROSS EXAMINATION

Q (By Mr. Karassik) Mr. Ortiz, can you tell me what this letter says about -- what reference it makes to being late or presents an excuse for your being late?

A This is saying that I'm in the program.

Q This just says that you're in the program?

A Yes, that's all, proof that I'm in the program.

Q I see.

You mean Mrs. Watkins didn't believe you were in the program?

A Right.

Q Can you account for the fact that Mondays, Wednesdays, and Fridays, Mr. Ortiz, were very rare exceptions, were probably your best punctual days at work at the nursing home?

A What is that?

Q Mondays, Wednesday andFridays.

MR. COFFEY: Objection, Your Honor.

JUDGE DIXON: Yes, I'll sustain the objection.

MR. KARASSIK: No further questions.

JUDGE DIXON: Is that all of this witness?

MR. COFFEY: That's it.

MR. KAYSER: I have no further questions of this witness, Your Honor.

MR. KLING: No further questions.

JUDGE DIXON: You may step down.

(Witness excused)

MR. COFFEY: May we have about ten minutes, Your Honor?

JUDGE DIXON: You meanyou're going to rest?

MR. COFFEY: No.

JUDGE DIXON: We better take more than ten minutes.

I think we'd better get something to eat.

MR. COFFEY: All right, Your Honor.

MR. KAYSER: How many more witnesses are you going to have?

MR.COFFEY: I'm not sure of that.

(Continued on following page)

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MR. COFFEY: I'm calling Mr. Lebowitz, Your Honor, under Rule 43-B.

Whereupon,

MORRIS LEBOWITZ,

was called as a witness on behalf of Geneal Counsel, having previously been duly ;sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) Mr. Lebowitz, did you tell the Board thatyou didn't know Ortiz was going to be discharged before he advised you that he had received a call from Watkins telling him he should report to work tomorrow?

A Right.

MR. KARASSIK: May have havethat read back?

JUDGE DIXON: Read it back, please.

Q (By Mr. Coffey) Did you advise --

JUDGE DIXON: Do you want to read it, Mr. Reporter?

(Whereupon, the record was read)

A Right.

Q And this was on a Sunday in June?

A It was on a Sunday.

MR. COFFEY: Do we have a -- does any one have a calendar here?

I didn't expect to call him right now.

MR. KONOW

U.S.A. Reporting

MR. COFFEY: a '74 calendar.

MR. KONOWE: Here.

(Mr. Konowe handing calendar to Mr. Coffey)

Q (By Mr. Coffey) Was that on June 8th, a Sunday?

A I know it was a Sunday.

I don't know whether it was June 8th or not.

Q How long before the election was it?

A About two weeks, three weeks.

Q Did --

MR. KARASSIK; Your Honor, will the Court take judicial notice of the fact that Sundays in June fall on the second, 9th and 16th and not the first or 8th.

Q (By Mr. Coffey) Now --

JUDGE DIXON: All right.

Q -- did you tell the Board that no one from Cycle Cleaning had advised you that they were dissatisfied with Ortiz because of his absences, latenesses or any other reason prior to his discharge?

A Would you repeat the question again?

Q Sure.

Did you tell the Board in your statement that no one from Cycle Cleaning had advised you that they were dissatisfied with Ortiz because of his absences, latenesses or any other reason prior to his discharge?

A Well, not for discharging, but they --

Q Did you say that in your statement, yes or no?

A For discharge, yes.

MR. KARASSIK: Your Honor, the statement is being used to exam a witness without there being any foundation laid for its use.

MR. COFFEY: It's been --

MR. KARASSIK: There has been no conflicting testimony.

There's been no indication that his memory needs to be refreshed.

He's just simply reading from a prior statement.

MR. KAYSER: Not only that, your Honor, it appears to me that the witness was about to say what he did say in full context but was cut off by counsel.

MR. COFFEY: Your Hnnor, we can lead witnesses if they are 43-B witnesses.

JUDGE DIXON: All right.

Go ahead.

Q (By Mr. Coffey) Did you ever speak with Mr. Ortiz about his absences or latenesses -- wait, excuse me.

Did you ever tell the Board that you never spoke to Ortiz about his absences or latenesses while he was working at Queens-Nassau Nursing Home?

A Right.

Q Did you tell us in your statement -- did you tell the Board in your statement that a few days after Ortiz was discharged, you talked to Watkins about Ortiz and that Watkins had not indicated to you before this that she had been dissatisfied with Ortiz?

MR. KARASSIK: Your Honor, if the questions are to be handled this way andhe's allowed to lead from reading the document, in all fairness, we should have a copy of that document, it should be marked for identification andwe should be marked for identification and we should be able to follow along.

MR. COFFEY: It's in evidence.

MR. KARASSIK: I beg your pardon.

I would like a copy of it.

MR. COFFEY: You can have a copy of it after I'm done.

MR. KARASSIK: I'm sorry, I don't think that's fair.

JUDGE DIXON: Well, I think he should have a copy of the document.

MR. COFFEY: There is probably a copy here, Your Honor.

Let me takea look.

Q (By Mr. Coffey) Did you tell the Board that a

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few days after Ortiz was discharged, you talked to Watkins about Ortiz?

A Well, we was talking about it, yes.

Q A few days after he was discharged?

A Yes.

Q And --

MR. KARASSIK: What page are you reading from?

MR. COFFEY: Page Four.

Q (By Mr. Coffey) Did you also say that Watkins did not indicate to you before this that she had been dissatisfied with Ortiz?

A I didn't say that. She didn't tell me -- I did not know that he was going to be fired. That was the question.

Q Did you tell theBoard in your statement, "Watkins did not indicate to me before this that she had been dissatisfied with Ortiz, referring to a few days after Ortiz was discharged."

A Probably is right.

Q That's right?

A Right.

MR. COFFEY: No further questions.

MR. KAYSER: No questions.

CROSS EXAMINATION

Q (By Mr. Karassik) Ortiz, didyou tell the

C.S.A. Reporting

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Board that Watkins -- "Watkins told me she had fired him," meaning Ortiz -- "because he was absent too much when I asked her why she had let him go."?

A Yes.

Q Was that --

MR. COFFEY: Your Honor, outside the scope of direct.

MR. KAYSER: Please, Your Honor.

JUDGE DIXON: Oh, come on, Mr. Coffey. Overruled.

Q (By Mr. Karassik) Was that a true statement when you made it?

A Right.

Q Do you regard it as true today?

A Yes.

Q Mrs. Watkins worked for whom, by the way?

A Cycle.

Q And you worked for whom?

A Queens-Nassau.

MR. KARASSIK: That's all.

JUDGE DIXON: Anybody else?

MR. COFFEY: No.

MR. KAYSER: No.

MR. KLING: I have no questions, Your Honor.

JUDGE DIXON: You may step down.

(Witness excused)

CSA Reporting

JUDGE DIXON: Now we'll take a recess until two o'clock.

(Time noted: 1:15 o'clock p.m.)

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AFTERNOON SESSION

(Time noted: 2:15 o'clock pm)

JUDGE DIXON: Back on the record.

MR. KAYSER: Your Honor, I would ask to recall Mr. Ortiz for just a couple of minutes of questioning in an area that was germane which I did not have a chance to touch upon earlier.

JUDGE DIXON: All right.

You are still under oath, Mr. Ortiz.

THE WITNESS: Yes, Your Honor.

RECROSS EXAMINATION

Q (By Mr. Kayser) Mr. Ortiz, I forgot to ask you a line of questioning.

When I asked you whether or not youare presently employed, you said "No," and you had not been employed since the time you were fired; have you made efforts to find --

JUDGE DIXON: Wait a minute.

Are you going to go into whether he's been working--

MR. KAYSER: No.

This goes to whether or not he's made efforts to find a job.

JUDGE DIXON: No, I'm not going to let that in.

MR. KAYSER: It goes to the issue of mitigation

of damages.

JUDGE DIXON: We don't go into those sort of things in this hearing. You'll have an opportunity to go into that if the occasion arises later on.

MR. KAYSER: I can have another hearing with respect to damages?

JUDGE DIXON: That's right.

MR. KAYSER: Very good.

JUDGE DIXON: The reason for that is that generally speaking, it's not necessary, it can be worked out ;by negotiations.

MR. KAYSER: Very good, Your Honor.

Then I have no further questions of Mr. Ortiz.

JUDGE DIXON: You may step down.

(Witness excused)

JUDGE DIXON: Mr. Coffey, call your next witness.

MR. COFFEY: Yes, Your;Honor.

The General Counsel calls Mr. Roth to the stand.

Whereupon,

LAWRENCE ROTH,

was called as a witness, on behalf of the General Counsel, was examined and testified on his oath as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) What is your full name?

MR. COFFEY: I'm calling him under 43B, Your

Honor.

JUDGE DIXON: All right.

MR. COFFEY: Just a few short questions.

MR. KAYSER: I'm going to objec at this point that this man is a hostile witness. It's the position of Cycle Cleaning --

JUDGE DIXON: What is his position?

MR. KAYSER: President of Cycle Cleaning.

JUDGE DIXON: Well, he has a rightto call him under 43B.

MR. KLING: Has a statement been taken from him?

MR. COFFEY: No.

I just have a few clean-up questions.

Q (By Mr. Coffey) Would;you please state your full name?

A Lawrence Roth.

Q What's your home address?

A 2489 Harbor Lane, Bellemore, New York.

Q Mr. Roth, do you have a supervisor in Cycle Cleaning by the name of Judy?

A Judy?

Q Yes.

A That's a first name?

Q Yes.

A Do you have a second name?

Q Henchly, or so mething like that.

A Not Henchly, no.

Q Do you have a supervisor with the first name of Judy?

A Yes.

Q Can you give her full name?

A Yes.

Judy Herschler.

Q Herschler?

A Yes.

Q Can you spell that?

A H-e-r-s-c-h-l-e-r.

MR. KLING: Your Honor, I think we should have some --

Q And --

JUDGE DIXON: Wait a minute.

MR. KLING: I think we should have some basis, or grounds on this particular woman to ascertain whether or not she is a supervisor or not.

MR. COFFEY: If Cycle Cleaning says she's a supervisor --

MR. KLING: I believe we had refused to stipulate to that effect.

MR. KAYSER: I have no objection to the question itself.

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Q Does this woman have the power to hire and fire people?

A Yes.

Q Has she ever been on the premises of Queens-Nassau Nursing Home?

A Yes.

Q Was she on the premises of Queens-Nassau Nursing Home in May of 1974?

A In May?

Q Yes.

A There's a possibility she was.

MR. KAYSER: Only if the witness knows.

Q Does she have blonde hair?

A Yes, she does.

Q Does she speak with an accent?

A Yes, she does.

Q What is the shift for all porters?

A The shift?

Q Yes.

A For all porters?

Q Yes.

A Where?

Q At Queens-Nassau Nursing Home?

Is it an eight-hour shift?

A It's a seven and a quarter -- eight-hour shift,

yes.

They work around the clock there.

JUDGE DIXON: Do they have three shifts?

THE WITNESS: There are three shifts, yes, Your Honor.

JUDGE DIXON: All right.

Q (By Mr. Coffey) Is one shift eight to four?

A Yes.

Q Do they get any time off for lunch during that period?

A Yes.

Q How ;much time?

A Three quarters of an hour.

Q So it's effectively seven and a quarter hours work which they're paid for?

A Yes.

Q Did Mr. -- did Mr. Dennis Perez replace Mr. Robert Ortiz as head porter?

A I really don't know.

Q Do you have the time cards for the period from January 5th through -- is it June 15th? For Mr. Dennis Perez, Mr. Thomas McKethen, Mr. Morris Wilkinson, and Mr. Oscar Pacheco?

A We --

MR. KAYSER: Excuse me.

With respect to the time period, it may differ for different employees because, like Mr. Pacheco, I know, was fired prior to the time period you're talking about,

But we do have the time cards here.

MR. COFFEY: You have for Mr. McKethen, Mr. Wilkinson and --

MR. KAYSER: Pursuant to your subpoena, yes.

MR. COFFEY: -- and Mr. Perez?

MR. KAYSER: Yes.

MR. COFFEY: May I have them, please?

You mean they're undifferentiated?

MR. KAYSER: This is the way they're kept.

MR. COFFEY: May I have the time cards for Mr. --

MR. KAYSER: I'm not familiar with them individually.

THE WITNESS: They're packed on a weekly basis there.

MR. COFFEY: I told you this is what I wanted from you yesterday, counsel, and you said you could do that.

Q (By Mr. Coffey) Can you extract the time cards from Mr. Perez, Mr. McKethen and Mr. Wilkinson?

MR. KAYSER: I object to this line of questioning on the grounds of relevancy unless counsel can tie in the relevancy.

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JUDGE DIXON: Well, I suppose he wants to show disparity of treatment.

MR. KAYSER: All these men he's mentioned have been fired.

MR. COFFEY: But when they were fired -- they weren't fired before the election, your Honor.

MR. KAYSER: Sowith.

MR. COFFEY: And in fact, Mr. Dennis Perez replaced Mr. Ortiz as head porter.

We have had no testimony that these men were fired, thatthey left the job or how they left the job.

THE WITNESS: Well, you --

MR. KAYSER: Your Honor, I submit if we're going to compare time records of employees, that we should look at the time of all of the porters and see which of those porters were kept on and employed and which were fired.

It just happens that the names mentioned by counsel are all men who were fired.

There their time records show that they had missed a lot of time, that very well may have been -- there's no evidence orbasis shown.

But we do know that Mr. Wilkinson is no longer employed. He's testified to that fact.

sec/9

Mr. McKethen has testified that he's no longer employed. That's in the record.

As to the other employees, Mr. Ortiz has testified that Mr. Pacheco was fired, that he had something to do with the firing himself.

MR. COFFEY: If we could get a stipulation from counsel that Mr. Perez, Mr. McKethen and Mr. Wilkinson's records as to absences and lateenesses were at least as bad as Mr. Ortiz, we will be glad to forgo any --

MR. KAYSER: I don't know that that's inevitably the case.

I've not examined it. Your Honor, I do have a compilation of records of all of the Cycle employees at the Queens-Nassau Nursing Home during the period in question, which, other than the time cards -- this is based upon the time cards, and these are also business records, though they have not as yet been introduced.

You can go down and look at all of the employees and their times.

JUDGE DIXON: It seems to me that this is something that you people should have worked out before you got here.

MR. COFFEY: Well, I attempted to.

MR. KAYSER: Your Honor, I have attempted to for weeks to try to show General Counsel the complete

picture of time records of employees.

JUDGE DIXON: I don't see what you're --

MR. COFFEY: We have --

JUDGE DIXON: I don't see what you expect to --

MR. COFFEY: We expect to show that in the case of Mr. Perez, Your Honor, he was retained at the home an in fact promoted to head porter with a record fully as bad as Mr. Ortiz's.

JUDGE DIXON: Let's get Mr. Perez's record t hen.

MR. COFFEY: Do you have Mr. Perez's record, his time cards?

Can you extract them?

THE WITNESS: Do you want me to take the time cards or off the payroll sheets?

MR. COFFEY: Let's take it off the time cards.

MR. KARASSIK: Do you have -- may we go off the record?

JUDGE DIXON: Yes.

Off the record.

(Discussion off the record)

JUDGE DIXON: Back on the record.

MR. COFFEY: I don't need him any moreon the stand at this time, Your Honor.

I will recall him.

Do you have any questions of him?

MR. KARASSIK: Wait a minute. Okay, I'll question him when he comes back.

MR. COFFEY: General Counsel calls Frazier Matthews to the stand.

MR. ROTH: I'm sorry, Mr. Coffey, which Wilkinson do you want?

MR. COFFEY: Morris.

Whereupon,

FRAZIER ARTHUR MATTHEWS,

was called as a witness, on behalf of the General Counsel, was duly sworn in, was examined and testified on his oath as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) What is your full name?

A Frazier Arthur Matthews.

Q Your home address?

A 338 Beach 69th Street, Rockaway Beach, Queens.

Q Mr. Matthews, I draw your-- what do you do for a living, Mr. Matthews?

A I'm embyed at the Five Towns Nursing Home.

Q As what?

A As an orderly.

Q As an orderly?

A Yes.

Q And --

A And I happen to be shop steward in the 1115 union.

Q Did you ever do any organizing for Local 1115?

A What do you mean "organizing"?

Q Did you ever distribute leaflets at other nursing homes previously?

A Yes, yes.

Q For Local 1115?

A Yes.

Q I direct your attention to June of 1974.

A Yes.

Q Were youpresent at any nursing home during June of 1974?

A Yes.

Q where?

A I was presently at the Nassau Nursing Home.

Q Queens-Nassau Nursing Home?

A Yes, Queens-Nassau Nursing Home.

Q Do youknow the dates you were present there?

A The date was the 10th.

Q Were you also there after the 10th?

A Yes, the 11th, right.

Q Were you there on the 10th and the 11th?

A Yes.

Q What time did you arrive at Queens-Nassau Nursing Home on the 11th?

A It was pretty early in the morning.

I'm not conscious of the time. The time, you know, I didn't pay attention to that closely.

Q During the moning of the 11th of June, 1974, did you see anybody go into Queens-Nassau Nursing Home?

A Yes.

Q Whom did you see go in?

A I saw 144, the union, go in.

Q Whom did you see from Local 144?

A Well, I saw two men and a woman, three people.

Q Any of the people that you saw go into Queens-Nassau Nursing Home on June the 11th present in the court here?

A Well, I can't remember really the face. The faces of the men, if they were here, I probably could pick them out.

It was a woman, which I'mnot sure. There was a woman with them, you know, but I can't remember her face.

Q Have you any recollection -- strike that.

Do you think that thewoman that you saw enter Queens-Nassau Nursing Home from Local 144 is present here today?

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A Well, like I said before, and I don't want to repeat myself, I said that I can't, you know, give you the description.

At the time I know it was two men and a woman that I saw from 144 going into the Home.

Q How do you know they were from Local 144?

A Because they were going in and out, see, and they was giving out, you know, leaflets, saying things that I was giving out leaflets that I was there.

Q And the leaflets that they were giving out, did you see what they said on them?

A The union, 144.

Q You saw the leaflets say 144?

A Yes, I saw the leaflets.

Q Now, on June the 11th, 1974, did yousee any one from Local 1115 enter Queens-Nassau Nursing Home?

A Yes.

Q Whom did you see?

A I saw Mr. Morales go in.

Q Do you remember what time of day that was?

A As I said before, the time meant nothing. You know, we was there and no one was conscious or aware of the time.

So I can't specify any time.

Q But you saw him go in?

A Yes.

Q And do you know how long he remained inside?

A You see, you're asking me a question that deals with time.

As I said before, I can't give you the specified time.

I know that he went in. He came out. You know, like I said, I can't really give you the time because then I will be, you know, wrong in setting a time, you see, so I'm not -- you know, I can't -- you are forcing me to set a time and this, you know, I can't do.

Q I see.

A I'm only, you know, giving you, you know, as far as I can remember or record, you know, in my mind.

Q Now, did you see Mr. Morales come out?

A Yes.

Q What entrance did he enter and what entrance did he leave?

A Well, I was -- I was standing by the fence when he went in.

Q What entrance did he go in?

A He went in the door -- well, the way the place is built up from the point of view where I was standing, you know, you go straight in and then I guess you make a turn,you know, where the glass door is.

Q Was it the main entrance he went in?

A Well, the main -- well, there are two entrances there.

I don't know which is the main entrance and which is the side entrance, because that was my -- youknow, I was there, and I had been there before.

So I can't give you a picture of it, you know, really.

All I know is he went in.

Q When Mr. Morales cameout, did he say anything to you?

A Well, when --

MR. KARASSIK: Yes or no, please.

A What do you mean, yes or no?

JUDGE DIXON: Did he say anything to you?

MR. KARASSIK; Just answer the question yes or no.

THE WITNESS: I can't answer the question like that.

You have to let me explain.

JUDGE DIXON: No, we don't need any explanation. Did he speak to you?

THE WITNESS: Yes.

JUDGE DIXON: All right.

Q (By Mr.Coffey) What did he say?

MR. KARASSIK; I object, your Honor.

JUDGE DIXON:; To what?

MR. KARASSIK; Hearsay.

THE WITNESS: No, it's not hearsay.

MR. COFFEY: Your Honor, we're just using it for the purpose of showing that Mr. Morales said so mething to --

MR. KARASSIK: He's already said he said something.

JUDGE DIXON: That's right.

MR. COFFEY: You're not going to allow in what he said?

JUDGE DIXON: Well, it's hearsay.

MR. COFFEY: Even if we don't use it for the truth of the matter --

JUDGE DIXON: What do you want -- what course of action do you want to -- what course of action do you want to show he took on the basis of what he was told?

MR. COFFEY: All right, Your Honor.

Q (By Mr. Coffey) Now, after Mr. Morales came out, did you see Local 144's agents enter or leave the building any more that day?

A They was going in and out all day long.

Q Okay.

MR. COFFEY: No further questions.

MR. KARASSIK: No questions.

MR. KAYSER: No questions.

CROSS EXAMINATION

Q (By Mr. Kling) Mr. Matthews, you said you saw two men and a woman --

MR. KARASSIK: Just a minute, Your Honor.

MR. KLING: All right, no questions.

JUDGE DIXON: All right.

You can step down.

(Witness excused)

MR. COFFEY: General Counsel calls Delores Taylor to the stand.

Whereupon,

DELORES TAYLOR,

was called as a witness, on behalf of theGeneral Counsel, having previously been duly sworn in, was examined and testified onher oath as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) What is your full name?

A Delores Taylor.

Q What's your home address?

A 5475 Almeda Avenue, Arvern, New York.

Q Mrs. Taylor, what do you do for a living?

A I'm a nurses' aide at the Five Towns Nursing Home, Woodmere.

Q Did you ever do any organizing for Local 1115?

A Yes.

Q I direct your attention to June of 1974.

Were you at any nursing homes distributing leaflets in June of 1974?

A Yes, I was for Rockaway.

Q For who?

A I was with 1115, which I'm a member of, at -- Queens-Nassau Nursing Home, it is, that's in Rockaway?

Q On what days?

A The 10th and 11th.

Q Of June?

A Yes.

Q On the 10th and 11th of June of 1974, didyou see representatives of Local 144 enter the premises of Queens-Nassau Nursing Home?

MR. KARASSIK: Your Honor, we stipulated to this.

A Yes, I did.

JUDGE DIXON: That's right, it's been stipulated that these people have entered.

MR. COFFEY: All right.

Q (By Mr. Coffey) On June 11th, 1974, Mrs. Taylor, did you see anyone from Local 1115 enter Queens-Nassau Nursing Home?

A Yes.

Q Who?

A Mr. Morales.

Q About what time of day was that?

A I really couldn't say.

Q You don't recall?

A No, I don't know what time.

The time, no.

Q And how long did he remain -- what door did he go into?

A I'm not going to say. I say where they put garbage and things like that.

I would say that's the back door, from my point of view of saying. I don't know if it's the front door or the back door, but I'm quite sure they won't have garbage and stuff at the front door.

Q Is it a double door or a single door that he went into?

A I pass that place every morning. I really don't know.

Q Was it a glass door or a wooden door?

A Yes, it's a glass door.

Q You saw Mr. Morales go in?

MR. KARASSIK: I didn't hear the answer.

JUDGE DIXON: Glass door, did you say?

THE WITNESS: Yes, it's a glass door.

Q (By Mr. Coffey) Was it -- is it a double door or a single door?

A I -- I don't know.

I pass it every morning. I really don't know -- going to work.

Q Does it say anything in frontofit? Does it have a canopy of any kind?

A I really can't recall. I pass it every day, too, going to work.

Q How long did Mr. Morales remain inside?

A Long enough.

Q How long?

Was it more than a few minutes or a few minutes or --

A A few minutes, a couple of minutes, a few minutes.

Q And didyou see him come out?

A Yes, I did.

Q Did he say anything to you when he came out?

A Yes, he did.

MR. COFFEY: No further questions, your Honor.

MR. KARASSIK: No questions.

MR. KAYSER: No questions.

JUDGE DIXON: You can step down.

(Witness excused)

JUDGE DIXON: Call your next witness, please.

MR. COFFEY: One more question, Your Honor.

If Morales said something to this lady, Your Honor, why is that hearsay?

She heard him say it.

JUDGE DIXON: Because Morales is not here to be cross examined.

MR. COFFEY: Morales is here.

JUDGE DIXON: The best evidence is for Morales to testify about it.

He's been on thestand. He's testified about this already.

MR. COFFEY: All right.

No further questions, Your Honor.

JUDGE DIXON: Call your next witness, please.

MR. COFFEY: General Counsel calls Ancil Harding to the stand.

Whereupon,

ANCIL HARDING,

was called as a witness, on behalf of the General Counsel, having previously been duly sworn in by a Notary Public of the State of New York, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Coffey) What is your full name?

A Ancil Harding.

Q What's your home address?

A 510 East 46th Street, Brooklyn, New York.

Q Mr. Harding, what do you do for a living?

A I work as an orderly at the Kew Gardens Nursing Home in Jamaica.

Q And do you ever distribute leaflets for Local 1115?

A Yes.

Q Have you ever been outside the premises of Queens-Nassau Nursing Home?

A Yes, I've been outside it twice.

Q I direct your attention to June of1974.

Can you tell me what dates in June of 1974 you were outside the Queens-Nassau Nursing Home to distribute leaflets?

A The 10th and 11th.

Q Now, while you were outside Queens-Nassau Nursing Home distributing leaflets, Mr. Harding, did you see anyone from Local 1115 entering Queens-Nassau Nursing Home?

A Yes, Mr. Morales.

JUDGE DIXON: Is this going to be the same thing?

MR. COFFEY: A little more, Your Honor.

JUDGE DIXON: Go ahead.

Q (By Mr. Coffey) About what time of day was

it?

A Between one and two.

I don't have that precise, you know, because we were -- it was between one and two o'clock.

Q And what door did he go into?

A Well, the door where they stack all of their garbage, a glass door there, a big glass door right where they stack the garbage.

I don't donw if it's the front of the building or -- but the employees usually go in and out there through that door.

Q Now, Mr. harding, did you see Mr. Morales through the glass door?

A Yes, I could have seen him where I was standing.

Q Was anyone with Mr. Morales when he was inside?

A He was speaking to a gentleman, just hairline like mine.

He spoke for a few minutes, three to four minutes, and then came back out.

Q And did you see Mr. Morales leave thebuilding?

A Yes, he left, he came back out.

Q Did Mr. Morales say anything to you when he came out?

A Yes, he spoke to me.

MR. COFFEY: Okay.

No further questions, Your Honor.

MR. KAYSER: No questions here, Your Honor.

MR. KLING: None here.

JUDGE DIXON: You don't have any questions, do you?

MR. KARASSIK: Yes, I think so, Your Honor.

CROSS EXAMINATION

Q (By Mr. Karassik) Mr. Harding, did you ever go inside of the Queens-Nassau Nursing Home?

A No.

Q Did you -- strike that.

Are you familiar, Mr. Harding, with the main entrance to the Home?

A I only know one entrance to the Home.

Q And in order to get to that entrance, do you walk directly into the lobby or must you make a turn?

A It seemed like it came from the street, you walk like this way and the door is something like this (indicating).

Q So you have to make a left turn in order to get into the lobby?

A He came off the street to the door and then they get into the lobby through the side, yes.

Q I'm going to give you a sheet of paper, Mr. Harding,--

A That will be hard for me to do. I told you it's

only since I've been there.

It would be hard for me to get the shape of the building.

Q Well, then maybe we can do it together, all right?

A Okay.

Q Will you assume with me that you're standing where I put this "X" mark.

Let's place the door in front of you. All right?

There's a door in front of you.

A Okay.

Q Now, how do you get into the building?

A You open the door.

Q This is a glass door here (indicating)?

A Yes.

Q All right.

You open this glass door and you move into what, a vestibule?

A Right, into a vestibule.

Q So over here there's a vestibule, is that correct, as you come in?

A Right.

Q And then how do you get into the building itself now?

A I think we have another door. I don't know what they have in there.

Q You have to make a left turn to get into the building?

A I can't remember if it's a left or a right, yes, it's on this side (indicating).

Q I see.

So you go through the door, you walk a few steps and then you have to turn this way to enter the main building.

Is that correct?

A something like that.

Q Now, were you standing when you -- when you saw Mr. Morales enter the building, were you standing in front of that glass door?

A No.

You see right where youhave the "X" there, it's right in there I saw him.

Q You were to the left of where--

A Right.

Q -- I have this "X"?

A Right, to the left.

Q Were you --

A The minute he goes inside the building, I --

Q Excuse me.

What did you look through in order to see him?

A That's the front door. He was in this area

you're speaking about here when I was talking to him, right along here somewhere.

Q Oh, it's your testimony that Mr. Morales spoke to this bald gentleman or balding gentleman in the vestibule?

A Yes, right in there.

Q It wasn't in thelobby?

A No.

I saw them rightin there.

Q It wasn't inthe main part of --

A They were away from me.

Q But you saw them in the lobby?

A Not right there, but they walked and I couldn't see where they went after that.

Q I see.

MR. KARASSIK: I have no further questions.

JUDGE DIXON: Mr. Coffey?

MR. COFFEY: No furtherquestions, Your Honor.

JUDGE DIXON: All right.

You can step down.

(Witness excused)

JUDGE DIXON: Why don't you put your diagram in as an exhibit?

MR. KARASSIK: I offer what there is of this, Your Honor, as Respondent's Exhibit Eight.

JUDGE DIXON: Any objection?

MR. COFFEY: No objection.

MR. KAYSER: No objection.

MR. KLING: No objection.

(Whereupon, Respondent's Exhibit Number Eight was marked received in evidence)

MR. COFFEY: Your Honor, aside from some stuff from Mr. Roth that we still have to get, General Counsel rests at this time.

MR. KAYSER: Mr. Roth will be available to give that testimony that you need.

JUDGE DIXON; Well, what I'd like to have you do is if you've got cards there, I don't see any need for examination on them.

The cards should speak for themselves.

I'd just as soon have the cards in, make whatever argument you want about it.

MR. COFFEY: That's fine, Your Honor.

MR. KAYSER: Your Honor, what we'll do is we'll put in the cards on all of the porters.

JUDGE DIXON: All right, do it that way.

MR. KAYSER: Do I understand that General Counsel's position is that he does not intend to call Mr. Cintron as a witness in this hearing?

MR. COFFEY: Your Honor, perhaps before we rest

we should take care of that matter.

General Counsel requests at this time that Mr. Cintron's name be deleted from the complaint

MR. AYSER: Well, I have no objection.

MR. COFFEY: For failure to cooperate.

MR. KARASSIK: Your Honor, I object to the deletion of the name. Imove that charges with respect To Cintron be dismissed with prejudice.

MR. KAYSER: That's right, I would join in that position, that it should be dismissed with prejudice as to Mr. Cintron.

JUDGE DIXON: Do you have any objection to that?

MR. COFFEY: No, Your Honor, I really don't.

JUDGE DIXON: all right. So I'll dismiss it.

MR. KAYSER: Thank you, Your Honor.

JUDGE DIXON: Let's go forward.

MR. COFFEY: May I have Mrs. Watkins for just one question, Your Honor?

JUDGE DIXON: All right.

MR. COFFEY: Mrs. Watkins, would you get on the stand, please?

JUDGE DIXON: You are still under oath.

THE WITNESS: Yes.

Whereupon,

ESTER WATKINS,

CSA Reporting

JUDGE DIXON: Back on the record.

MR. KAYSER: I assume that Cycle Cleaning will proceed with its defense, Your Honor.

JUDGE DIXON: All right.

MR. KAYSER: Cycle will call as its first witness, Mrs. Ester Watkins.

JUDGE DIXON: You were previously sworn in, Mrs. Watkins.

THE WITNESS: Yes, Your Honor.

MR. COFFEY: I wonder if Mrs. Watkins's statement is around here somewhere.

Could we have a few seconds, Your Honor?

JUDGE DIXON: What for?

MR. COFFEY: Just so we can have -- Mrs. Watkins's statement has been taken from us as an exhibit.

We just want to get it back.

JUDGE DIXON: Do you have it now?

MR. COFFEY: Yes, Your Honor.

JUDGE DIXON: All right.

Whereupon,

ESTER WATKINS,

was recalled as a witness, on behalf of the Respondent, having previously sworn in, was examined and testified on her oath as follows:

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Q (By Mr. Kayser) Now, you've already identified yourself for the record.

A Ester Watkins.

Q All right.

Mrs. Watkins, are you familiar with the general performance of Mr. Ortiz as an employee of Cycle Cleaning?

A Yes, I was.

Q For the Court, describe how he performed his duties, when on the job and also describe from your recollection his attendance record.

A Well, when Cycle took over the contract at Queens-Nassau Nursing Home, Mr. Ortiz and a few of the other guys were already there.

We made him a lead man, or head porter, whatever you want to call it.

We gave him his position in the office and lobby and patients' dining room, his area that he cleaned was the office, lobby and patients' dining room.

He was like, we called him second legs for the housekeeper because he gave out when the housekeeper was off.

Also, he was in charge of giving the maid and the porters equipment, supplies, you know, when the housekeeper was off, and was in charge of the linen, you know, things like that.

Q Were you satisfied with the way he performed his duties?

A When on the job?

Q Yes.

A When he was there, you know, in the beginning he was very, very good. But as the time went on, he stayed out more and more and came in later, you know, more often.

Q Well, we will get to this problem of -- as you saw it, of his not being there.

But when he was there, you were satisfied with the job that he performed on the job; is that correct?

A I wouldn't say a hundred percent.

Q But substantially?

A Yes.

Q Do I understand your testimony that it was Cycle Cleaning that gave him the job of head porter?

A Yes.

Q Did he get a pay raise at that time?

A Yes, he did.

Q If I show you the payroll records of Cycle Cleaning --

MR. KAYSER: First of all, let's have them marked as Joint Repondent's Exhibit Number Nine, for identification.

(Whereupon, a document was marked as Joint Respondent's Exhibit Nine, for identification as of this date.)

Q (By Mr. Kayser) Mrs. Watkins, I show you a sheath of documents and ask you if you can identify these documents.

(Handing documents to witness)

A Yes.

This is the office payroll record.

Q Of Cycle Cleaning?

A Yes.

Q And -- strike that.

MR. KAYSER: I offer the documents into evidence, Your Honor.

JUDGE DIXON: What for?

MR. KAYSER: As the payroll records of Cycle Cleaning.

Q (By Mr. Kayser) What is showon the the payroll records?

A Well, it shows the employee's name, the rate of pay, the hours the employee worked, how much each employee gets a week, and their tax deductions and their net pay.

MR. KLING: Are there two separate exhibits?

JUDGE DIXON: What do we need all of this for?

What do you want to show?

What will you prove by this?

MR. KAYSER: Well, when Mr. Ortiz got his pay raise, he testified he got it in September, that he was made head porter by his prior employer.

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MR. COFFEY: He said by Mr. Lebowitz, and he didn't quite know when it was.

MR. KAYSER: He testified in September. The record is quite clear on that.

JUDGE DIXON: Well, can't you get a stipulation fro the records as to when --

MR. KAYSER: If I can have --

JUDGE DIXON: You want all of this stuff in to show that?

MR. KAYSER: Your Honor, the records are also going to be as easy schedule of those green cards.

It's easier to tell what's on the green cards by looking at these records which are a compilation of the underlying documents.

JUDGE DIXON: Do you have any objection?

MR. COFFEY: No, Your Honor.

JUDGE DIXON: All right.

I will receive in evidence Respondent's Exhibit Number Nine.

(Whereupon, Respondent's Exhibit Number Nine was marked received in evidence.)

MR. KLING: Is that just one exhibit?

MR. KAYSER: Yes.

I will state for the record, if counsel is willing to accept, that the document shows --

MR. COFFEY: What was seven and eight? I missed that somewhere along the line.

MR. KLING: Seven is the letter regarding the methadone treatment.

Eight is the diagram of the building made by Mr. Harding.

MR. COFFEY: Okay.

mr. KAYSER: Exhibit Nine -- is this Nine?

MR. KLING: Yes.

MR. KAYSER: -- shows that Ortiz received his pay raise on November 25th, 1973.

Q (By Mr. Kayser) Now, did there come a time, Mrs. Watkins, when Mr. Ortiz's attendance was late when he was late for work?

A Yes.

Q When did his lateness become a problem for you?

A I just can't answer that. I'll have to make a statement.

Q Well, respond to the question as best you can.

A All right.

Mr. Lebowitz came to me and said that he wasn't pleased with the condition of the Home.

Q This was the general condition of the Home?

A Yes, right, the cleaniness.

I told him, you know, that we had so many absenteeisms

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and latenesses -- just say, like, it was supposedto have been seven porters there a day. But if it was not but four or five, you know, those couldn't carry on the full work load and that was the problem.

I said -- I suggested that we call -- that we have men on stand-by that we could call in.

He says no, you should hire people that take their job seriously and are responsible and come to work when they're supposed to and leave and you won't have this problem.

He said, you know, because he won't be willing to pay overtime, you know, for someone that didn't -- for someone who repeatedly didn't show up orwas, you know, constantly late.

Q Do you recall when this conversation with Mr. Lebowitz took place, approximately?

A This was in, I would say December.

Q Of 1973?

A Three.

Q Now, when did you begin to be concerned about Mr. Ortiz' lateness?

A Well, I think it was early -- early January.

I called a meeting with all of them. I explained the importance of their job, especially of their attendance.

I explained that they must come in, you know, on time and , you know, do their job.

q Do you recall a conversation with Mr. Ortiz with respect to his methadone clinic?

A Yes.

Q What -- when was that conversation?

A Let's see.

In early January Mr. Tannenbaum asked me to come into his office and speak to him.

When I sent in, he had a list of three people that he said was on drugs and he wanted them dismissed immediately.

I called those three people together -- Mr. Ortiz, being one of them -- and I asked them if they were on drugs.

And if they didn't want to tell me openly, they could come to me privately and, you know, let me know if it was true.

The other two guys -- well, all three denied it at the time. But later Mr. Ortiz did come to me and tell me that he was once an addict but now he was on methadone and that he had been on it for, Iguess, maybe a year or so.

You know, I asked him could he get me a letter to that effect so that I could keep it in his record in case

the question ever came up again. And he told me yes, he did get me the letter.

Q Did he get you the letter?

A Yes, it was a little bit later on, but he did get me the letter.

Q Did you put it -- what did you do with the letter?

A I -- I requested a meeting with Mr. Tannenbaum. I showed him that Mr. Ortiz was on a, you know, therapy program, I guess you would call it, and, you know, it was all right -- that I put it in his file.

Q I show you Respondent's Exhibit Five for identification, which is a cover of a file, and ask you if you can identify that as the folder which would contain -- in which you put the letter.

(Handing document to witness)

A Yes.

Q Where is that --

MR. COFFEY: Objection, Your Honor.

JUDGE DIXON: On what basis?

MR. COFFEY: Actually I withdraw the objection.

JUDGE DIXON: All right.

Go ahead.

Q (By Mr. Kayser) Now, where was this file folder kept at --

A In the housekeeping office in a file cabinet.

Q What else was kept in this personnel file of Mr. Ortiz?

A His application --

MR. COFFEY: Objection, your Honor.

The best evidence of what was kept in the file is what was kept in the file.

JUDGE DIXON: Overruled.

Q (By Mr. Kayser) You may answer the question, Mrs. Watkins.

A His application, each year -- each 12 months, you know, each employee must have a physical examination, so a copy of that was there, chest X-ray, you know, a copy of that, any warning notices or anything pertaining to the employee would be kept in his or her individual folder -- file.

Q I show you some additional documents, three documents here, and I ask you if you can identify these documents.

(Handing documents to witness)

A Yes.

Q What are those three documents?

A One is his application.

Another is his W-4 Form.

The third is where he had had his urine -- his tests, you know, his urine -- I guess physical.

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MR. KAYSER: I ask that these three documents be marked as Respondent's Exhibits 5-A, B and C.

JUDGE DIXON: What for?

MR. KAYSER: Well, Your Honor, it is the contantion of Cycle Cleaning Company that Mr. Perez has gone through his personnel file and has taken documents out --

MR. KARASSIK: Ortiz, you mean.

MR. KAYSER: Yes.

MR. COFFEY: Objection, Your Honor. There's no evidence to that.

JUDGE DIXON: He says it's their contention.

All right, continue.

MR. KAYSER: And we're trying to establish the documents which have been left in the file.

JUDGE DIXON: Is it your contention to show that the file no longer contains the letter, the methadone letter?

MR. KAYSER: Yes.

JUDGE DIXON: Why don't you get such testimony?

MR. KAYSER: I am, your Honor.

JUDGE DIXON: Let's not go through all of this just for that.

Did there come a time when you looked at that file to look for this letter?

THE WITNESS: I --

JUDGE DIXON; The methadone letter, Mrs. Watkins.

THE WITNESS: You know, after I showed it to Mr. Tannembaum, there was no -- I never went through it again, I know I, personally, put it there.

JUDGE DIXON: All right.

Q (By Mr. Kayser) Now, did there come a time that you gave warnings --

a Yes.

Q -- to Mr. Ortiz?

A Yes.

Q Were these warnings with respect to his lateness?

A Yes.

Q Were they oral or were they in writing?

a Both. Some was oral and some was in writing.

Q Did you give oral warnings first before you gave written one?

A Always.

Q When was your first written warning, to the best of your recollection?

MR. COFFEY: Objection, Your Honor.

JUDGE DIXON: What basis?

MR. COFFEY: We have no -- we have nowritten warnings put in evidence here.

JUDGE DIXON: Well, she's testifying about getting a written warning. Let's see what happens.

Overruled.

A I would say about in February, about the second week of February, I -- somewhere in there.

Q And do you know where that written warning -- what happened to the writing -- what was the practice with respect to the warnings that were given in writing?

MR. COFFEY: Objection, Your Honor.

JUDGE DIXON: Overruled.

THE WITNESS: SHould I answer it?

JUDGE DIXON: Go ahead.

A I would write out the complaint, you know, the absenteeism In fact, I would write out you are late on -- and I gave the days and -- youknow, the dates of the lateness, and I said this must be stopped immediately.

I would call the employee down and let them read it. They would sign it. I would make a carbon copy of it.

They would sign it. I would take a copy and put in in their records, and I would give them a copy of it.

Q You say that you'd put a copy in their records?

A Yes, the file, meaning the folder.

Q And did you in fact, Mrs. Watkins, with the written warning to Mr. Ortiz, give him his signed copy and put a signed copy in the --

A Yes.

Q -- personnel file?

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A Yes.

MR. COFFEY: Obejction, Your Honor.

Q Now --

JUDGE DIXON: On what basis?

MR. COFFEY: I'd like the whole --

JUDGE DIXON: You'lll have a chance to cross-examine.

MR. COFFEY: All right, Your Honor.

Q (By Mr. Kayser) Now, approximately how many times didyou give written warnings to Mr. Ortiz as to lateness?

A I, personally, gave him about three or four.

Q And in each case he was given a copy of the written warning and a copy was put in his file?

A Yes.

Q Now if someone went to get his personnel file --

A If they did, they are supposed to find everything there.

Q Are his written warnings in his file?

A No, they're not.

Q When did you first learn that his written warnings were not in that file?

A When Mr. Kline was housekeeper at Queens-Nassau.

Q What't eh approximate time?

A This was, I would say, about the middle of May.

Q Did Mr. Ortiz have access to his personnel file?

A To all, he had access to all of them.

Q To all personnel files?

A Yes.

Q Explain to the Court the type of access Mr. Ortiz had, why did he have that access and where were -- and where were the files physically kept, how were they kept.

Give a picture of how Mr. Ortez had access to the files.

A Well, Monday through Friday you had a housekeeper there, but on Saturdays and Sundays, the fact that Mr. Ortiz was the leadman, or the head porter, he had keys to the housekeeping office, the clean linen and the housekeeping supplies.

In the housekeeping office is a file cabinet with these records of all of the employees there. He had to go in and make out, say -- he had to go and change the tape on the clock, the punch clock, he had to have the copy for the soiled linen that's going out or the clean linen that's coming in in order to check.

I mean, he had access to the office.

Q Okay.

Did any other non-supervisory employee at the time that it was discovered that Mr. Ortiz' late notices were not in his file, have access to the files?

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A No.

That's why he was paid extra, because it just wasn't open to each and every one, just the housekeeper and many had keys to the door.

Q So, as I understandyour testimony, the files in fact were under lock and key, but Mr. Ortiz had the keys?

A Right.

Q Did Mr. Ortiz's lateness continue even after the written warnings were given to him?

A Yes.

I remember it was about the end of February that I had the bookkeeper in Cycle's office give me a run down on Robert Ortiz and Dennis -- Robert Ortiz, Dennis Perez and Morris Wilkinson, their attendance record.

I called the three of them down. I told them, you know, how the records were showing.

Dennis said, you know, well, he was sorry he didn't realize, you know, he was late and out that much.

Wilkinson said that he would do better.

Ortiz said he would, too, but -- the other two did straighten up, but he didn't.

Q When was this meeting?

A This was about the end of February.

Q Did you have any additional discussions with Mr.

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Ortiz subsequent to February with respect to his lateness?

A Yes.

In fact, it was about the -- I would say -- second week of March that I spoke then with Mr. Roth about it, his absenteeism and his lateness.

That warning was to no avail, that we would, you know, discharge him, you know, fire him.

Mr. Roth says, well, he would talk to Mr. Lebowitz, you know, about it, because Mr. Lebowitz had recommended him very highly.

He said he would talk to him about it.

I think Mr. Roth did because I know he came in and he spoke to Ortiz himself about the lateness.

Q Mr. Roth spoke to Mr. Ortiz, you said?

A Yes.

Q Were you present?

A Yes.

Q When was that meeting?

A I think this was in about March, sometime in March.

Q Do you have personal knowledge of any other meetings Mr. Roth may have had with Mr. Ortiz with respect to lateness?

A Yes.

Q When?

A There was another time that Mr. Roth was downstairs -- Mr. Roth was in the housekeeping office.

I had asked him to come out to have a meeting with the people, you know, in general.

he came and he called Mr. Ortiz in the housekeeping office downstairs.

You know, he told him, you know, he says, if you keep this up, we're going to have to let you go, we don't want to do this, you know.

Q When was this meeting?

A The first meeting, I think it was in February, and the second one with Mr. Roth -- if I'm not mistaken -- was March.

I think it was. It was February or March. The first one, I think , was February and another one was March.

Q You heard Mr. Ortiz testify to a meeting of porters you called in May --

A Yes.

Q -- at the nursing home in the basement, did you not?

A Yes.

Q Do you have a recollection of a meeting in May which you called of porters?

A I think I have a memo in my book there. I kept

a daily log of not everything, but many of the things that happened.

I did -- I had a problem there with porters punching in each others time cards.

A porter didn't even show up sometimes and the card was punched in and out.

I, myself, although I was off on Saturday and Sundays, occasionally I would go in, I would find a porter punched in and he had not been there.

I would stay a couple of hours. He wouldn't even show up for the whole day.

I did have a meeting, you know, called all of them downstairs and told them that they're not doing their friend any good by punching them in because the next time I found that someone was punched in and wasn't there, the guy that was punched in was going to get fired and if I found out who punched him in, that he was going to get fired, too, and I says, you know, I don't care, you know, a union or not, I'll change the whole darn crew around if I have to, but I'm not going to have this.

Q Did you make any reference to Local 1115?

A No, I did not.

Q Did you make any reference to any other union?

A No, I did not.

Q By number, that is.

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Is your answer you didn't?

A No, I did not.

Q I see.

What day was that meeting held?

A I would have to look in my book to --

MR. KAYSER: I would ask to have marked as Joint Respondent's Exhibit Ten, a daily "Day at a Glance" black-covered book with 1974 on it.

Q You don't need the '73, do you?

A No.

(Whereupon, a document was marked as Respondent's Exhibit Number Ten, for identification, as of this date.)

Q (By Mr. Kayser) I direct your attention to Exhibit Ten, Mrs. Watkins and ask you if you can identify what Exhibit Ten is.

What is Exhibit Ten?

A This is Exhibit Ten? (indicating)

Q Yes.

A This is my "Day at a Glance" book that I use to keep my appointments and so forth in.

Q And will you describe to the Court how you make markings in that book.

A Well, I --

Q What do you use the book for?

JUDGE DIXON: she already did.

MR. KAYSER: Okay.

JUDGE DIXON: She said this is a daily log that she puts things in there that she thinks ought to go in there.

MR. KAYSER: Very well, Your Honor.

I offer Exhibit Ten into evidence.

JUDGE DIXON: Let's get what you want in the testimony.

My God, you don't want the whole book in here. I'm sure you only got one or two things that you want to elicit.

MR. KAYSER: Very good, Your Honor.

Q (by Mr. Kayser) Mrs. Watkins, thumb through Exhibit Ten and see if you can find anything in Exhibit Ten which refreshes your recollection with respect to when the meeting of porters was held in the basement.

A It was on Wednesday, May the 22nd, 1974.

Q And what is written in that book that refreshes your recollection?

A It says, "QN had meeting about punch-in another's time card, Queens-Nassau."

Q Were any other meetings held in May?

A Oh, yes -- with the Queens-Nassau?

Q With the porters at Queens-Nassau.

A Well, I had quite a few.

Q During the month of May -- go through your book and see what in there refreshes your recollection with respect to the meetings of porters at Queens-Nassau and with respect to the content of those meetings, what was said, if there's anything that refreshes your recollection, relate that.

A Well, for instance, I have here May first, inspection at Queens-Nassau fair. Robert Ortiz, NG.

Q What does NG mean?

A No good.

Q No good?

A Right.

Q Do you know why you put that in the book?

A Because he had had a big fight with the housekeeper, threw a can of --

MR. COFFEY: Objection, Your Honor.

MR. KAYSER: Your Honor --

JUDGE DIXON: Overruled.

A Because he had had a big argument with the housekeeper and threw a can of garbage across the dining room.

Q Okay.

Continue.

A Also pertaining to Queens-Nassau on May first was that I had a meeting with Mrs. Herschler that we should replace the maid at Queens-Nassau, that I spoke with the

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evening man and that his work had not been too good.

On May the 7yh, I was at Queens-Nassau all day. We had State inspection there.

JUDGE DIXON: Well, this is all very interesting, but I'm not interested in what she did all during the month of May.

MR. KAYSER: Your Honor, I offer this kind of testimony to demonstrate to the Court the degree of reliability and credibility of this witness and what she's testifying to is based upon --

JUDGE DIXON: I don't think anybody is questioning the reliability of her notes there.

I don't think they're --

MR. KAYSER: Very good.

Q (By Mr. Kayser) See if there's anything else in the month of May pertaining to the issues that you heard discussed in testimony, Mrs. Watkins.

Take it on through to then to the date of the elections.

A Okay.

On Saturday, May the 25th, I went into Queens-Nassau and Oscar Pacheco's card was punched.

he didn't come in the whole day. He was discharged on May 25th.

MR. COFFEY: What does this have to do with anything,

Your Honor?

JUDGE DIXON: Well, this has been brought out. This has some bearinqon the issues, I assume.

A (Continuing) On June the 4th, I made a notation that I arrived at Queens-Nassau Nursing Home at 8:03 and Robert Ortiz's card was punched, but he didn't come in until 8:30 and we must let him go.

Q That's when you made it -- what did you just say about letting him go?

A And it says must let him go.

Q Okay.

What is that date?

MR. COFFEY: Well, it's a self-serving declaration, Your Honor.

JUDGE DIXON: Well, this is from her notes.

MR. KAYSER: I admit that General Counsel is right, this is self-servinq, but we have a right to qive our testimony, too.

JUDGE DIXON: Go ahead.

Q (By Mr. Kayser) Now, Mrs. Watkins, what -- how did you find out that this card was punched that day?

A Because Mr. Ortiz had the keys to the housekeeping office and to the linen, I didn't.

I would have to qet it from him in order for the nurses to have the linen to qo upstairs.

The fact that they did want the linen, because that was the first duty in the morning was to take the linen up, and they didn't have it, and I looked all over for him and I couldn't find him.

I even paged him. No response.

Q What time was this?

A Well, I got there two minutes after eight. This went on -- and I asked everybody, you know, did they see him.

They said no. Well, he was paged, nothing. 8:3- I saw him walking in the door with his jacket on.

Q You had went -- you had gone and found that his time card had been punched?

a Yes.

Q And then you happened to see him walking throughthe door at around 8:30 --

A Exactly.

Q With his coat on?

A I stood by the door purposefully.

Q Did you confront him on that occasion?

A Yes, yes.

q You did confront him?

A Yes.

Q And what did you say to him?

A I asked him was he just coming in. He said yes.

sec/57

Q And did you mention to him the fact that you had found his time card already punched?

A Yes.

Q You told him that?

A Yes.

Q And what did he say to you?

A He said he didn't know anything about it.

Q And was there any other conversation at that meeting with him?

A No.

That was the only conversation I had with him then.

Q And when did you make this particular entry in your diary?

A This was June the 4th, on a Tuesday.

Q That was the same day it happened?

A Yes.

Q And what time did you make that entry in he diary, what time of the day?

A I usually make it in the evening, you know, at the last place I'm at, I usually make my notes that day.

Q That's your practice?

A Yes.

Q But you don't have any specific recollection of when you made it that particular day, but the practice is

that you make it in the evenings, is that your testimony?

A Right, yes.

Q And did there come a time that you fired Mr. Ortiz?

A Yes.

Q And what day did you fire him?

A Mr. Ortiz was dismissed on Sunday, June the 9th.

Q Now, Mrs. Watkins, at the time that you fired Mr. Ortiz, you were aware, were you not, that there was going to be a union election?

A Yes, I was.

Q Did the fact that there was going to be a union election play any role in your decision to fire Mr. Ortiz?

A Well, yes and no.

(Continued on following page)

SC1
Tape 2

Q Explain your answer to the court.

A Right.

Queens-Nassau wasn't the only Nursing Home that Cycle had or that I was in charge of.

Some of the Nursing Homes that we had, that we was in charge of, had union. I know for a fact that what you put up with, you know, an employee, this is almost like what you are stuck with.

I know that, say, number one, the type of record that Robert Ortiz had, number one, you know, we couldn't put up with that, we definitely couldn't put up with that because it was causing problems with the other people, you know.

I had spoke to him, Mr. Roth had spoke to him, Mr. Lebowitz and I set Mr. Ortiz down and spoke to him about it. Instead, he became very hostile --

MR. COFFEY: Can we find out when Mr. Lebowitz and she sat down with Mr. Ortiz and spoke to him about it?

MR. ROTH: You will have your chance.

MR. COFFEY: Is there a time on that?

Q (By Mr. Khyser) Continue, Mrs. Watkins.

A Mr. Lebowitz and I had set down with him.

Mr. Lebowitz had singularly set down with him and spoke to him about his lateness. And as I said, Mr. Ortiz then had became very hostile toward Mr. Klein, the house-

SC2

keeper.

Mr. Klein had told me, you know, about him using profanity, everytime something would happen he would go to Mr. Lebowitz about it.

And so I just said, "well, we will have to let him go."

I spoke to Mr. Roth about it and he says, "well, we will have to let him go."

Q Did you fire him to prevent him from voting in the union's election?

A No, I did not.

MR. KHYSER: No further questions, Your Honor.

CROSS EXAMINATION

Q (By Mr. Coffey) What reason would Robert Ortiz have to go into the files of porters?

What were his duties with regard to the files of porters?

A Say if a porter called in and said he wasn't coming to work, Mr. Ortiz would call me, you know, more or less called my house, each weekend -- well, it would be weekends and would ask me, well, X isn't coming in, should I call someone in?

If I would say how many do you have there already? If it was, you know, like four, I would say yes, you know, call -- what have you, you know, one of the other guys,

SC3

in which he would go into the folder, you know, into the file and into their folders to get their phone numbers.

Q Were their phone numbers kept in any other place besides the files?

A No.

Q You didn't have their phone numbers with you?

A No.

Q May I see your -- may I see the diary, please?

A Sure.

MR. KHYSER: Of course.

Would you want me to offer it into evidence?

MR. COFFEY: No.

I just want to take a peek at it.

THE WITNESS: Here.

(Handing.)

Q (By Mr. Coffey) When was it that you sat down with Mr. Ortiz and Mr. Lebowitz?

A This was late February or early March, I would say.

Q Late February or early March?

A I believe so.

Q Did you record that meeting in your little black book?

A No, I didn't.

Many of them I didn't record in there.

Q You didn't think it was important?

SC4

A I couldn't put every important thing that happened in the course of a day in that little black book.

Q On March 5th of 1974, did you record that Mr. Lebowitz did not -- was not pleased with Judy and wants her out?

A I thought that was important because I reported it to Mr. Roth.

Q When did you have these meetings with Mr. Roth and Mr. Ortiz about Mr. Roth's lateness?

A Say that again, please?

Q When did you have these meetings with Mr. Roth and Mr. Ortiz?

A This was, I think, one in February and I think the only other one was in March, something of that nature.

Q Can you recall when in February and when in March?

A You wouldn't find them in there.

Q They are not in there, either?

A No.

Q These important meetings are not in there?

A As I said, I couldn't put all the -- of the important meetings. Once I -- in fact, if I didn't have a chance that day to tell Mr. Roth, or what have you, I put it down.

But if I was able to speak to him or Mrs. Herschler that day, I didn't record it in the book. Or if they

SC5

was involved with it, I didn't have to keep a record of it.

Q Did you see Mr. Ortiz take anything out of the -- of any file?

A No, I had never saw him taking any out.

Q Did you ever question him about him taking things o ut of the files?

A No.

MR. COFFEY: I beg your indulgence, Your Honor.

Q When was this that you had the conversation with Perez, Ortiz and Wilkinson about their lateness?

A This was --

Q In February, did you say?

A Yes. I think it was in February.

Q Did you ever tell the Board that you had a conversation with Ortiz, Perez and Wilkinson about their lateness and absences in May of 1974?

A I probably might have.

Q You told the Board that?

A I might have.

Q Was that the same conversation or a different conversation?

A There were two different times that I have their attendance drawn up from the office and spoke to them.

Q Would you find this May meeting in your little black

SC6

book?

A No.

Q I thought you said that after February, Perez and Wilkinson improved but Ortiz didn't?

A Yes, but I didn't want him to feel like I was picking on him.

Not a 100 percent did they improve, they was better but not a hundred percent improvement were they.

And Mr. Wilkinson -- I mean Mr. Ortiz was starting to get a very flashy attitude on him.

When you tried to talk to him, he would set to get off my back, you know.

Q Did you tell the Board about your February conversation with Perez, Wilkinson and Ortiz?

A I can't remember whether I did or not.

Q So it wasn't one conversation, it was two then?

A Yes.

Q And after these guys improved, you called them back in again and talked to them?

A They improved some but not, you know, 100 percent.

Q And you say that conversation you had with Mr. Lebowitz was in February?

A With --

Q In February of 1974?

A With Oritz?

SC7

Q Yes.

A I think it was, yes, but -- about February, sure.

Q Did you ever tell the Board that you had a conversation with Lebowitz and Ortiz in May of 1974?

A I might have been wrong on the time.

There wasn't but one conversation that Mr. Ortiz, I and Mr. Lebowitz had in reference to his lateness.

Q It might have been -- scratch that.

You might have been wrong as to time, is that your present testimony?

A Yes, because I know it was only once.

Q So you didn't speak to Lebowitz about -- and Ortiz after May 16th, did you?

A I am pretty sure I did.

This was almost a weekly thing.

Q Oh, so you are changing your testimony that you spoke to him after May 16th and you spoke to him back in February, too?

MR. KHYSER: Objection to form.

JUDGE DIXON: Sustained.

Q (By Mr. Coffey) Did you have a conversation with Lebowitz and Ortiz about lateness in February?

A I would say possibly yes, possibly yes.

Q Possibly, or did you or didn't you?

A I am saying possibly yes. I can't remember saying

whether it was February or March.

It could have been March.

Q Did you have another conversation with Lebowitz or -- and Ortiz in May of 1974?

A I had, with Mr. Lebowitz and Mr. Ortiz, one meeting.

I had numerous meetings with Mr. Lebowitz, and with Mr. Ortiz, but not the three of us together.

One time was the three of us together in a meeting.

Q And when was that?

A That was --

MR. KHYSER: Objection, Your Honor, because of repetiveness.

JUDGE DIXON: You asked her that question about six times now.

MR COFFEY: Your Honor, they did this to my witness.

I would like to see their witness get the same treatment.

MR. KHYSER: Objection.

That's not a basis for continuing, Your Honor.

JUDGE DIXON: Sustained.

Q (By Mr. Coffey) When did you have the conversation with Mr. Lebowitz and Mr. Ortiz?

MR. COFFEY: I just want to know, Your Honor, for my own edification.

JUDGE DIXON: Well,she is not certain.

SC9

Q (By Mr. Coffey) Was it in February or was it in May?

A I am not sure.

I had one such meeting, but it could have been in May it could have been in February.

I can't pinpoint it for you.

Q Ahd at this one meeting, what did you say to Mr. Lebowitz and Mr. Ortiz?

A Mr. Lebowitz told him, says, you know, Mrs. Watkins is going to get rid of you if you don't do better, you know.

He [illegible], "yes, I know she told me."

"So he says, "well, you know, you are going to have to do better. I am the one asking Mrs. Watkins to give you another chance."

"He said, "well, I will do better." And --

Q And how long after this conversation was Mr. Ortiz fired?

A I don't know.

I couldn't say that.

Q Whose idea was it to talk to Mr. Ortiz with Lebowitz, yours or Mr. Lebowitz'?

A It was Mr. Lebowitz' idea.

Q Would you be surprised if I told you that Mr. Lebowitz said he had no conversation with you about Mr.

SC10

Ortiz' lateness prior to the time he was discharged?

A Can I tell you something?

After he testified today, I spoke with him and he admitted to me that he was wrong.

MR. COFFEY: May I have the answer stricken, Your Honor.

MR KHYSER: I think that's a responsive answer.

JUDGE DIXON: I will let it stand.

You asked her if she had been surprised.

Q (By Mr. Coffey) Did you record that in your diary?

A That happened today.

Q How many times did you meet with Mr.Roth about Mr. Ortiz?

A I didn't keep a record.

Q How many times -- was it more than once?

A Oh, yes.

Q In what months ?

A I don't know. All of them, you can put down all of them.

You could say once a month and you'd be guessing good.

Q And how many times did -- did you meet with Mr. Roth and Mr. Ortiz together?

A Twice.

Q In what months were they?

A I would say about February and maybe March.

Q What happened at the first meeting?

A Mr. Ortiz says that he was going to do better.

He always said that.

Q What did Mr. Roth say?

A He says that he had very good reports on him and didn't want to, you -- you know, he liked him and he didn't want to let him go, but we would have no alternative if he didn't do any better.

Q And what did Mr. Roth say at the second meeting?

A More or less the same thing.

I know he told me that --

MR. COFFEY: No further questions, Your Honor.

A -- he won't --

MR. ENGLEHARD: Let her finish the answer, Your Honor.

MR. KHYSER: Counsel is being rude to the witness.

In the middle of a witness' answer, he says no further questions.

MR. COFFEY: I thought she was finished, Your Honor.

JUDGE DIXON: Well, she wasn't.

Q (By Mr. Coffey) You can finish your answer if you want to.

A Well, he just told him that if it happened again, he was going to have to let him go, he would have not choice.

JUDGE DIXON: Any further questions?

SC12

MR. KLING: Yes, I have some questions.

JUDGE DIXON: All right.

Q (By Mr. Kling) Mrs. Watkins, did you attend a meeting at the Trueville Bar?

A Yes.

I didn't actually attend the meeting, I went to -- the meeting was very much in progress, in fact it was almost over when I got there.

Q And what was your purpose in going over to Trueville Bar?

A Well, I had a sit-down strike by Brookhaven Beach Nursing Home.

I went over there to ask Mrs. Allen some questions in relation to the strike that we had had at Brookhaven Beach.

Q Where is Brookhaven Nursing Home in relation to Queens-Nassau?

A I would say a block a block and a half maybe a way from Queens-Nassau Nursing Home.

Q Now, had you had occasion to have conversations with Mr. Lebowitz regarding Mr. Ortiz' attendance between the two of you?

A Yes.

Q And what was the substance of those conversations?

A Well, as I say, Mr. Ortiz was employed at Queens-

SC13

Nassau Nursing Home when Cycle took over -- you know, made the contract there.

Mr. Lebowitz recommended Mr. Ortiz very highly and subsequently made him the lead man.

It appeared that everytime that there was a problem, Mr. Ortiz would completely by pass the housekeeper and go straight to Mr. Lebowitz, which constantly caused conflict between Mr. Lebowitz and the housekeeper.

This is why, like, we added Mr. Lebowitz and, you know, at another nursing home you don't bear an assistant administrator in such a matter, he would say to handle it yourself.

But the fact that Mr. Ortiz was in thehabit of all the time going to Mr. Lebowitz, we had to, you know, contend with him.

Q Had you ever suggested the possibility of discharging Mr. Ortiz prior to the time that he was discharged?

A Oh, yes.

Q And whom did you suggest -- discuss that with?

A I discussed it with Mr. Roth, I discussed it with Mr. Lebowitz many times. This is why Mr. Lebowitz had the meeting with him, you know, telling him that he had better straighten up, you know.

Q I see.

SC17

Q -- related to the court?

A No, none.

MR. KHYSER: No further questions, Your Honor.

MR. COFFEY: No further questions, Your Honor.

JUDGE DIXON: All right.

You may step down.

(Witness excused.)

MR. COFFEY: Can we get Mr. Roth?

MR. KHYSER: Cycle is about to call Mr. Roth as his witness.

Why don't we hold in abeyance your cards and we will figure out a way of putting them in speediously.

MR.COFFEY: All right.

(The next witness was already sworn by the Judge.)

MR. COFFEY: Is there any way of stipulating that the --

MR. KHYSER: Give me a chance to stipulate about it.

I think this stuff can come in quickly if I can get everything in.

DIRECT EXAMINATION

Q (By Mr. Khyser) What's your full name?

A Lawrence Roth.

Q What do you do?

A I am the vice president of Sycle Cleaning Company.

SC18

Q Mr. Roth, do you know Mr. Ortiz?

A Yes, I do.

Q When did you first meet Mr. Ortiz?

A I met Mr. Ortiz soon after we contracted Queens-Nassau Nursing Home.

Q When do you recall your first conversation with Mr. Ortiz?

A Well, again it was soon after we had contracted Queens-Nassau where I come in, not really a conversation, you might say greetings as I came into the building.

Q Do you recall any discussions with Mrs. Watkins with respect to Mr. Ortiz?

A Yes, I do.

We have had a number of discussions with Mrs. Watkins regarding Mr. Ortiz.

Q On what subject or subjects did these conversations take place?

A The subject was his lateness and absentee.

Q To your best recollection, when did you first hear that there was a lateness or absentee problem with Mr. Ortiz?

A This was about January or February, the early part of the year.

Q Of 1974?

A '74, right.

SC19

Q And do I understand your testimony that this was a recurrent --

A Yes.

Q -- series of dicusssions with Mrs. Watkins?

A Yes.

Q Did there come a time that you met with respect to his absenteeism or lateness?

A Yes.

Q When was that?

A This was -- this must have been around May, sometime --

Q Your best recollection is when?

A My best recollection is sometime around May.

Q And was Mrs. Watkins present?

A Yes, she was.

Q And where did this meeting with Mr. Ortiz take place?

A It took place on the main floor just opposite the elevator of the nursing home.

Q And who said what to whom at this meeting near the elevator?

A Well, Mr. Ortiz was working in that area.

I asked him to please put down whatever he was doing, and speak with me.

I told Mr. Ortiz that although we are very satisfied with his performance as a worker within the home when he is there, unfortunately he doesn't spend enough time with us

he is late consistently, he is absent and that I am going to be watching him thereafter and unless he straightens out that we are going to have to terminate him.

Q Looking him right in the eye when you were telling him this?

A Surely.

Q And did Mr. Ortiz give you a response?

A Yes.

Q And what was that response?

A Well, he understands the situation and he is certainly going to try and do the proper thing in the future.

Q About how long did this meeting last?

A I don't think it lasted more than ten minutes, 15 minutes at most.

Q It was a ten or -- 15 minute meeting?

A Yes.

Q Did Mr. Ortiz say anything else during that meeting?

A No, not that I can recollect.

Q Did Mrs. Watkins say anything during that meeting?

A No.

Q You did most of the talking?

A I did most of the talking, yes.

Q Now, you heard Mrs. Watkins testify, and her recollection is somewhat different as to when meetings took place, and she testified that there were two meetings that you

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CYCLE CLEANING CORP. AND MAURICE GERSHMAN d/b/a QUEENS NASSAU NURSING HOME, JOINT EMPLOYERS

and

CASE NO. 29-RC-2659

LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Petitioner

and

LOCAL 1115, JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

Intervenor

CYCLE CLEANING CORP. AND MAURICE GERSHMAN d/b/a QUEENS NASSAU NURSING HOME, JOINT EMPLOYERS

and

CASE NO. 29-CA-3924

LOCAL 1115 JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

and

LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Party in Interest

REPORT ON CHALLENGED BALLOTS AND OBJECTIONS, ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

Pursuant to an Agreement for Consent Election entered into by and between Maurice Gershman d/b/a Queens Nassau Nursing Home, herein called the Home, Cycle Cleaning Corp. herein called Cycle, wherein Home and Cycle acting and herein referred to as Joint Employers for the porters and maids employed at the Home in the unit described below, Local 144, Hotel, Hospital, Nursing Home and Allied Health Services Union, Service Employees International Union, AFL-CIO, herein called the Petitioner, and at times Local 144, and Local 1115 Joint Board, Nursing Home and Hospital Employees Division, herein called the Intervenor and at times Local 1115, which was approved by the

undersigned on May 21, 1974, an election was conducted by secret ballot on June 12, 1974 in a unit consisting of all service and maintenance employees including aides, orderlies, kitchen aides, laundresses employed by the Home and porters and maids employed jointly by Cycle and the Home, at the premises located at 520 Beach 19th Street, Far Rockaway, New York, excluding all office clerical employees, licensed practical nurses, registered nurses, professional employees, guards and supervisors as defined in the Act.

The Tally of Ballots served on the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters.....99

Void Ballots.....2

Votes cast for Local 144.....33

Votes cast for Local 1115.....8

Votes cast against participating labor organizations.....23

Valid votes counted.....64

Challenged ballots.....11

Valid votes counted plus challenged ballots.....75

Challenges are sufficient to affect the results of the election.

The Home [1/] challenged the ballots of William Vasquez, a kitchen aide, in that he was employed on an irregular part time basis, Juan Cintron, a porter, and Christine Williams, a nurses' aide in that they were no longer employed by the Home and the Joint Employe respectively on the day of the election, and Joseph Bazin, a porter, because he was a union member. [2/] The Petitioner joined in the challenge of Vasquez for the reason stated above.

The Board Agent challenged the ballots of Maureen Gebon, William Barnett, Elwood Murphy and Gabriel Halperin because their names were not on the election eligibility list. The ballots of Josephine Cullen, Annette King and Louise Staley were also challenged by the Board Agent as they voted after the election poll was closed but before the ballots were opened and counted and a Tally of Ballots issued.

1/ Cycle had no observer at the election.

2/ The Home observer was unable to specify whether she was referring to membership in the Petitioner's or Intervenor's organization.

Thereafter on June 17, 1974, the Intervenor filed timely objections to conduct affecting the results of the election as follows:

1. The Employer, through its agents, and the Petitioner through its agents, threatened employees with loss of jobs if Intervenor won the election. Such threats of reprisal constituted an interference with the free exercise of the employees' rights.

2. The Employer threatened to and did discharge ROBERT ORTIZ and J. CINTRON before the election because of their activities on behalf of the Intervenor and their expression of their desire to vote in favor of the Intervenor. Such threats and actions of reprisal constituted an interference with the free exercise of employees' rights.

3. The Employer during the two days immediately preceding the election permitted the Petitioner and its agents free and unfettered access to its premises to hold meetings of its employees and campaign during their working hours while denying any access to its premises to Intervenor. These acts constituted interference attempting to affect the results of the election.

4. The employees eligible to vote were restrained and coerced by the Employer, through its agents, and Petitioner and its agents, in the exercise of the rights guaranteed to them by Section 7 of the Act prior to and during the election.

5. That these and other related acts and conduct illegally interfered with the exercise of free choice by employees as to the election conducted.

Pursuant to paragraph 6 of the Agreement for Consent Election herein, the undersigned caused an investigation to be made of the challenged ballots and objections. During the investigation the parties were given full opportunity to submit evidence bearing on the issues. The undersigned also caused an independent investigation to be made. The investigation disclosed the following:

The Challenges

William Vasquez, Joseph Bazin, Christine Williams, William Barnett

During the course of the investigation, the Home, Cycle, the Petitioner, and the Intervenor stipulated that Vasquez was a regular part time employee,

Joseph Bazin[3] and Christine Williams were employed on the eligibility date and the day of the election, William Barnett was on sick leave on the eligibility date, was employed on the day of the election and was inadvertently omitted from the eligibility list, and that the challenges to their respective ballots should be overruled. Accordingly, and inasmuch as the investigation has not adduced any evidence to the contrary, the challenges to the ballots of William Vasquez, Joseph Bazin, Christine Williams, and William Barnett will be and hereby are overruled.

Maureen Gebon, Elwood Murphy and Gabriel Halperin

It was also agreed and stipulated during the course of the investigation by the Home, Cycle, the Intervenor and the Petitioner that Maureen Gebon, Elwood Murphy and Gabriel Halperin were employed subsequent to the eligibility date and therefore were not eligible to vote in the election. Accordingly and inasmuch as the payroll records of the Home support the contention of the parties, the challenges to the ballots of Gebon, Murphy, and Halperin will be, and hereby are, sustained.

Josephine Cullen, Annette King, and Louise Staley

As indicated above, the ballots of Cullen, King and Staley were challenged by the Board Agent because they voted after the poll was officially closed. Subsequently, all parties agreed and stipulated that the respective challenges of these employees be overruled inasmuch as they were otherwise eligible to vote. Accordingly, and inasmuch as there is no evidence to the contrary, the challenges to ballots of Cullen, King, and Staley will be, and hereby are overruled.

Juan Cintron

Cycle and the Home assert that Juan Cintron was terminated prior to the election and that he was therefore ineligible to vote. The Petitioner has taken no position as to Cintron's eligibility. The Intervenor contends Cintron was discriminatorily discharged by the Joint Employer in violation of the Act and that he was therefore eligible to vote. Cintron's discharge was also alleged as part of Intervenor's Objection #2, discussed infra.

3/ Bazin's membership in the union would have no bearing on his eligibility to vote.

On October 4, 1974, in Case No. 29-CA-3924, pursuant to an unfair labor charge filed by the Intervenor, the Acting Regional Director for Region 29 of the Board, issued a Complaint and Notice of Hearing, alleging inter alia that Cintron was discharged by the Joint Employer because of his membership and activities in behalf of the Intervenor in violation of Sections 8(a)(1) and (3) of the Act. Accordingly, I will defer resolution of the challenge to the ballot of Juan Cintron pending disposition of proceedings in the above mentioned unfair labor practice case.

In summary, I have overruled the challenges to the ballots of William Vasquez, Joseph Bazin, Christina Williams, William Barnett, Josephine Cullen, Annette King, and Louise Staley, sustained the challenges to the ballots of Maureen Gebon, Elwood Murphy, and Gabriel Halperin, and have held in abeyance the resolution of the challenge of the ballot of Juan Cintron. However, the opening and counting of the above mentioned overruled challenged ballots will be deferred pending disposition of the objections to the election discussed below.

The Objections

Objections #1

The Intervenor alleged that the Joint Employer and Petitioner through their agents threatened employees with loss of jobs if the Intervenor won the election. No evidence was submitted by the Intervenor to support that portion of his allegations alleging threats by the Petitioner. Accordingly, I will dismiss this portion of Objection #1.

However, in the Complaint and Notice of Hearing issued in Case No. 29-CA-3924, identical allegations were made relative to threats by the Joint Employer, as set forth herein.

Objection #2

Intervenor asserted that the Joint Employer threatened to and discharged Juan Cintron and Robert Ortiz because of their activities on behalf of and support of the Intervenor. As discussed above, in the section of this report dealing with challegges, Complaint and Notice of Hearing was issued in Case No. 29-CA-3924, in which it was alleged inter alia that Juan Cintron was discriminatorily discharged in violation of the Act. The Complaint and Notice of

Hearing further alleged that Robert Ortiz was similarly discharged by the Joint Employer and that both discharges occurred subsequent to the filing of the petition and prior to the conduct of the election herein.

Objection #3

The Intervenor alleged that the Cycle, the Home, and the Joint Employer engaged in disparate conduct during the two days before the election by denying it access to the premises of the Home to campaign among the unit employees, although such access was afforded to the Petitioner. Substantially similar allegations were alleged in the Complaint and Notice of Hearing in Case No. 29-CA-3924.

Objection #4

The Intervenor alleges that prior to and during the election the Petitioner and Joint Employer restrained and coerced employees. The Petitioner, Cycle, Home, and the Joint Employer categorically deny the allegation.

In support of this objection William Morales, the Intervenor's Business Agent, asserts that during the course of the election, he observed an agent for the Petitioner, whom he identified as one named "Craig or Gregg", in the kitchen of the Home, who appeared to be conversing with employees therein. Morales stated he did not overhear the conversation.

Various attempts have been made by the Regional Office to contact William Craig, the Petitioner's agent who apparently was identified by Morales but Craig has been unavailable. The Petitioner's other agents who were active in the election campaign, i.e., Virginia Allen, Willie Godwin and Marvin Goodman catgorically denied talking to employees on the premises of the Home on the day of the election.

Aside from other acts of restraint and coercion, that have already been discussed above, the Intervenor presented no other evidence in support of this objection.

Accordingly, I will overrule this objection because of lack of probative supporting evidence.

Objection # 5

The Intervenor contends by "the above and other related acts and conduct", there was interference in the exercise of free choice by employees in the election conducted. The "above acts" have already been discussed and will be disposed of as set forth in this report. As for "the other related acts and conduct" referred to by the Intervenor in this Objection, it has made no specific allegations or submitted any other evidence that has not already been discussed herein. Accordingly, I will overrule this objection.

As a result of the investigation of Objections 1, 2, 3, it appears that substantial and material factual issues, including issues of credibility exist. These issues raised by Intervenor's Objections are substantially similar to the issues raised in the Complaint and Notice of Hearing in Case No. 29-CA-3924, as noted herein.

NOW, THEREFORE, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, that Case Nos. 29-RC-2659 and 29-CA-3924 be, and they hereby are, consolidated for the purposes of hearing, ruling, and decision by a Administrative Law Judge; that thereafter Case No. 29-RC-2659 shall be severed and transferred to the undersigned Regional Director for further processing.

You are hereby notified that the consolidated hearing will be held on November 12, 1974 at 10:00 a.m., in a hearing room on the fourth floor, 16 Court Street, Brooklyn, New York before a duly designated Administrative Law

Judge of the National Labor Relations Board, at which time and place the parties will have the right to appear in person, or otherwise, and give testimony on all issues raised by the Complaint in Case No. 29-CA-3924 and the Objections 1, 2, and 3 filed in Case No. 29-RC-2659 respectively.

Dated at Brooklyn, New York, this 31st day of October, 1974.

Samuel M. Kaynard
Regional Director
National Labor Relations Board, Region 29
16 Court Street
Brooklyn, New York 11241

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

MAURICE GERSHMAN d/b/a QUEENS NASSAU NURSING HOME,

Employer,

and

LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED HEALTH SERVICES UNION, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Petitioner,

and

LOCAL 1115 JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION,

Intervenor.

CASE NO. 29-RC-2659

OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF ELECTION.

INTERVENOR, LOCAL 1115 JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION, objects to the results of the election conducted on June 12, 1974 for the following reasons.

1. The Employer, through its agents, and the Petitioner Union through its agents, threatened employees with loss of jobs if Intervenor Union won in the election. Such threats of reprisal constituted an interference with the free exercise of the employees' rights.

2. The Employer threatened to and did discharge ROBERT ORTIZ and J. CINTRON before the election because of their activities on behalf of the Intervenor Union and their expression of their desire to vote in favor of Intervenor Union. Such threats and actions of reprisal constituted an interference with the free exercise of employees' rights.

3. The Employer during the two days immediately preceding the election permitted the Petitioner Union, Local 144, and its agents free and unfettered access to its premises to hold meetings of its employees and campaign during their working hours while denying any access to its premises to Intervenor. These acts constituted interferance attempting to affect the result of the election.

4. The employees eligible to vote were restrained and coerced by the Employer, through its agents, and Local 144 and its agents, in the exercise of the rights guaranteed to them by Section 7 of the Act prior to and during the election.

5. That these and other related acts and conduct illegally interfered with the exercise of free choice by employees as to the election conducted.

Intervenor Union, therefore respectfully requests that the aforesaid election be set aside, be declared null and void and of no consequence, and that a new election be scheduled in due course.

DATED: New York, New York
June 14, 1974

Respectfully submitted,

For: LOCAL 1115 JOINT BOARD, NURSING HOME AND HOSPITAL EMPLOYEES DIVISION

CHARLES R. KATZ, ESQ.
By: Milton M. Konowe, Esqs.
Attorneys for Intervenor
360 Lexington Avenue
New York, New York 10017

CERTIFICATION

I, Milton M. Konowe, attorney associated with the attorney for the Intervenor herein, hereby certify that on the 14th day of June, 1974, I did serve a true copy of the within Objections to Conduct Affecting the Results of Election on the parties below by mailing a true copy of same through the United States Post Office, postage prepaid to:

Hon. Samuel M. Kaynard, Regional Director
National Labor Relations Bord - Region 29
16 Court Street
Brocklyn, N. Y. 11201

Queens Nassau Nursing Home
520-B 19th Street
Far Rockaway, N. Y. 11691

Local 144 S.E.I.U., AFL-CIO
233 West 49th Street
New York, N. Y. 10019

Cycle Cleaning Corp.
77-30 164th Street
Flushing , N. Y.

Vladeck, Elias, Vladeck & Lewis, Esqs.
1501 Broadway
New York, N. Y. 10036

A 201 Affidavit of Service by Mail — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MAURICE GERSHMAN, etc.,

Petitioner,

- against -

NATIONAL LABOR RELATION BOARD,

Respondent.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Eugene L. St. Louis *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1235 Plane Street, Union, N.J. 07083

That on the 31st *day of* October *19* 75 *deponent served the annexed* Appendix

upon Elliott Moore & Laura Ross Blumenfeld *attorney(s) for* Respondet *in this action, at* 1717 Pennsylvania Ave, Washington D.C., 20570

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 31st *day of* October *19* 75

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

Eugene L. St. Louis

Print name beneath signature

EUGENE L. ST. LOUIS